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THE RESTORATION OF THE PROPRIETARY OF MARYLAND AND THE  
LEGISLATION AGAINST THE ROMAN CATHOLICS DURING THE  
GOVERNORSHIP OF CAPT. JOHN HART (1714-1720).

BY

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The Crown of England had governed the province of Maryland for over twenty years when Benedict Leonard Calvert, eldest son and heir of Charles, the third Lord Baltimore, "publicly renounced the Romish errors." Seizing upon the fact of a Protestant revolution in Maryland, which followed hard upon the Protestant revolution in England, King William had deprived the proprietary of his political rights over his palatinate. The change had undoubtedly been for the benefit of the province. It is true the old religious freedom had been succeeded by the establishment of the Church of England; but justice was probably better administered, education for the first time received attention, and the nepotism which was the inevitable consequence of regarding the province as the proprietary's private property had passed away with the change of government. The Roman Catholics chafed at their deprivation from the control of government, and even threatened to remove to the domains of His Most Christian Majesty of France,<sup>1</sup> but the Protestants were the majority and the heads of the great Protestant families formed the council.

The Church of England was established by law, but its adherents were like the squires of England—caring more for it as a national faith than as a rule of life. Scattered on their plantations, there were many planters whose adherence to the Church was merely nominal, and as the livings were in the presentation of the Government, the character of the clergy was often far from immaculate. Good men there were in both laity and clergy of the established church. Many good

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<sup>1</sup> Scharf, 1, 390.

men were found in the Quaker meetings which Fox, Christison, and the other zealous missionaries had founded. In the Eastern Shore Makemie was introducing Presbyterianism into American soil. The Puritans of Providence had become Quakers or Anglicans, and the "Papists" were far more important from the prominence of their leaders than their number, which was less than one-tenth of the population of the province.<sup>1</sup> The settlements of the 40,000 people in the province were still along the rivers which empty into the Chesapeake Bay. Until the Germans from Pennsylvania drifted along the valleys of the Blue Ridge, after 1730, the back country was unsettled. Annapolis was the only town, and that had only a few hundred inhabitants. St. Marys City had died when the capital had been withdrawn. Almost everyone was engaged in the cultivation of tobacco, and this staple of the province was the common currency, being given in payment at the rate of 1 penny per pound. In England the assembly of the province was represented by Col. Nathaniel Blakiston, who, having been once a governor of Maryland, knew well its circumstances and possessed the full confidence of the provincials.

The proprietary had an agent in Maryland to attend to his private affairs and to watch that the governor and assembly did not encroach upon his lands and revenues. This position had been held by Charles Carroll, a prominent Roman Catholic, since Col. Henry Darnall had laid it down, about 1692. Carroll had acquired a "vast estate in this province by the office he formerly occupied and his practice in the law." We shall frequently come across him as the leader of the Roman Catholics.

Maj. Gen. Edward Lloyd, president of the council, had held the executive power in the province since the death of Governor John Seymour, on July 30, 1709. Head of a family which has remained prominent in Maryland until this day, he was drawing from the treasury two salaries, one as temporary governor and one as councilor. This, we shall see, gave rise to trouble. It was seldom that a locum tenens retained power for four years, as Lloyd did, but probably the last effort of the aged proprietary to regain control of his province caused the delay. In February 1741 Charles, Lord Balti-

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<sup>1</sup>Scharf, 1, 370.

more, petitioned<sup>1</sup> that the government might be restored to him. Apparently the Crown was willing at first to commission his nominee, Col. John Corbet, and a commission was made out for him on June 27, 1711. Difficulties arose, however, for on July 21 Sir Edward Northey told the Queen that she has the right to appoint a governor, until satisfied that the proprietor can sufficiently secure the province against the enemy. For this or some other reason Corbet was never sent out. Meantime Benedict Leonard, the heir of the proprietary, "having for some years expressed to several his inclinations to become a member of the Church of England," finally "publicly renounced the Romish errors" and communicated in the Church of England.<sup>2</sup> It is usually supposed that this step was taken through mercenary motives, but we know too little of the circumstances to dogmatize upon the matter. The argument "post hoc, ergo propter hoc" is always dangerous. He had married, in 1698, Charlotte Fitzroy Lee, daughter of the Earl of Lichfield, and had by her four sons and two daughters. Their married life had not been happy, and they had separated some years before this date. The children were sent to "Popish seminaries abroad" by the grandfather and educated there at his expense. To Benedict Leonard the proprietary had given an allowance of £450 per annum until the son's change of faith, when this was withdrawn. Immediately after his becoming a member of the Anglican Church, Calvert sent for his children and placed them at Protestant schools in and about London.

Queen Anne, whose Protestant councilors recognized the value of gaining over the nobility, granted Benedict a pension of £300 per annum during the life of his father for the maintenance of his children, and appointed Capt. John Hart "captain-general and governor in chief of Her Majesty's province of Maryland." Hart's tributes to his patron and friend, that he was a "person of very distinguishing judgment" (June 1, 1715, council) and had a "gentle and sweet disposition" (lower house, April 23, 1716), are the only bits of description extant concerning the character of Benedict Leonard Calvert.

Of Captain Hart himself we know very little, save what the Maryland records show us. He was nephew to John Vesey,

<sup>1</sup>Scharf, 1, 377.

<sup>2</sup>Ibid., 379.

the Archbishop of Tuam, whose sister Lettice had married Merrick Hart, of Crobert, County Craven, Ireland. John and Lettice Vesey were children of the venerable Thomas Vesey, and thus Captain Hart came of a family long devoted to the service of the Episcopal Church of Ireland. Archbishop John Vesey was born at Cobrannel, County Derry, Ireland, and was successively Archdeacon of Armagh and Bishop of Limerick before he reached his highest dignity. He died in 1716, shortly after his nephew became governor of Maryland. Captain Hart had served for several years in Spain and Portugal during the wars of the Spanish succession. Beyond these facts his whole life, apart from the six years of his governorship, is almost a blank. How well he bore his honors here we shall see shortly. He was recommended for the governorship by Calvert upon promising to return to him £500 per annum out of the profits of the government. This seems a large amount, but we must remember the governorship of Maryland was an extremely lucrative post.

On January 1, 1714<sup>3</sup>, Lord Bolingbroke, the secretary of state, directed that a commission be drafted for Hart.<sup>1</sup> This was speedily prepared,<sup>2</sup> as were also a series of instructions to guide him in the conduct of his office.<sup>3</sup> With these in his possession, Hart started from England in the early spring and arrived in Maryland on May 29, 1714. The province had been nearly five years without a permanent governor, and this one might only spend part of the year in Maryland, if he chose to take advantage of the commission given him to reside at New York during the hot season.<sup>4</sup> The first year, at least (and, indeed, we have no evidence that Hart spent any length of time out of Maryland during his administration), the new governor found sufficient to occupy him in his province.

After publishing his commission and the treaty of peace with Spain, Hart at once summoned the provincial assembly, which met at Annapolis on June 22, 1714. It was the third session of this assembly, which had been prorogued in the preceding November. The upper house, or the "council in assembly," consisted of 12 members—wealthy planters, chief

<sup>1</sup> March 12, 1714, the board of trade recommended that Tobias Bowles be made governor.

<sup>2</sup> Drafted January 12 and approved by order in council January 17.

<sup>3</sup> Drafted by board of trade January 29; approved by order in council January 31.

<sup>4</sup> Apparently he never did this.



men of the province. Among them were Edward Lloyd, Thomas Brooke, William Coursey, Richard Tilghman, William Whittington, Thomas Addison, Samuel Young, and Thomas Eunnalls. The lower house, representing the 40-shilling freeholders, consisted of 50 members—4 from each of the 12 counties and 2 from the city of Annapolis. Robert Ungle,<sup>1</sup> of Talbot County, was the speaker, and among the prominent members<sup>2</sup> were Henry Peregrine Jowles and Kenelm Cheseldyne, of St. Mary; St. Leger Codd, of Kent; John and Thomas Purnell, of Somerset; John and James Mackall, of Kent; James Smallwood, of Charles; John Fendall, Solomon and Charles Wright, of Queen Anne; Matthew Tilghman Ward and James Lloyd, of Talbot, and Thomas Sprigg, of Prince George. As their clerk<sup>3</sup> they chose Thomas MacNamara, a lawyer, who was a connection of the Carrolls and was to be a great thorn in Hart's side.

The council had no committees, the house had four—on elections and privileges, on laws, aggrievances, accounts. The committees must have carried on their deliberations in the evening. The day was well filled with legislative sessions, for the delegates were always anxious to return to their homes as soon as public business could be dispatched. The quorum<sup>4</sup> was fixed each session, and was 18 or 22 members and the speaker. Two sessions of the lower house were held daily, lasting generally from 8 to 11 a. m. and from 1 to 6 p. m. The council was more leisurely, and met from 9 to 11 a. m. and 2 to 5 p. m.<sup>5</sup>

These meetings were not mere nominal ones. A member who did not appear at the second roll call in the morning lost his allowance, and one absent in the afternoon lost 5 shillings, unless satisfactory cause was shown for the absence.<sup>6</sup>

Questions of privilege come up from time to time, as at the session of 1719, when we find the delegates committing a

<sup>1</sup> July 3, 1714 (L. H. J.), he was unanimously chosen treasurer of the Eastern Shore.

<sup>2</sup> October 9, 1714, William Watts was ordered to show cause why he did not attend this session.

<sup>3</sup> L. H. J., June 30, 1714. Bernard White chosen assistant clerk and sworn to keep the secrets of the house.

<sup>4</sup> L. H. J., April 27, 1715; May 28, 1715.

<sup>5</sup> L. H. J., June 24, 1714. October 6, 1714, lower house, 9 a. m. to 4 p. m.; upper house, 10 a. m. to 4 p. m.; May 18, 1715, lower house, 7 to 11 a. m. and 1 to 6 p. m.

<sup>6</sup> L. H. J., June 21, 1714; L. H. J., October 5, 1714. Day's allowance forfeited if delegate "disappears."

man<sup>1</sup> to custody of the sergeant for failure to appear before the election committee, and unseating a member<sup>2</sup> for having been "unduly elected," because the sheriff was "very partial and remiss." The sheriff is fined £5 and ordered to make acknowledgment of his fault and thank the delegates for their lenity, which he accordingly does, while the expressions used by the unseated member in a petition to the governor are pronounced "indecent," and he is ordered to apologize.

A rather mysterious case of privilege is that of Tobias Pollard,<sup>3</sup> a delegate, whose petition to the council is stated by that body basely to affront the governor and the whole legislature, and to tend to create jealousies and distrust between the people and the governor and assembly. If the petitioner, they say, were a tool in the case alleged, what must be thought of representatives who are easily perverted by one single pernicious person to consent to the ruin of their country.

The day after the beginning of every session, both governor and assembly proceeded to St. Anne's Church and listened to a sermon delivered by Rev. Samuel Skippon, of that parish, or Rev. Henry Hall, of St. James Herring Run Parish, lying a few miles to the south of Annapolis.<sup>4</sup>

Each day, after beginning of the session, "was read what was done yesterday." When leave was given to bring in a bill,<sup>5</sup> it was read twice in the house where introduced and then sent to the other house. There the "paper bill" was also twice read, and if neither rejected nor amended was returned to the house whence it came, where it received a third reading and engrossing. The engrossed bill was then sent to the upper house and signed, usually at the close of the session, by the governor in presence of both houses. Money bills, of course, were introduced in the house of delegates. Relations with the Indians were peaceful, and the treaties with them were easily renewed. There were few aborigines in the province, and they were well inclined, though somewhat disturbed that their emperor, Astiquas, had left them and gone

<sup>1</sup> George Forbes, L. H. J., May 19, 1719.

<sup>2</sup> Peter Taylor, from Dorchester County, L. H. J., May 19, 1719. He was reelected.

<sup>3</sup> U. H. J., May 19, 1719.

<sup>4</sup> If the sermon was liked, a gratuity followed, vide L. H. J., July 18, 1716. L. H. J., June 1, 1719, Skippon given 2,000 pounds of tobacco for great charge in residing at the seat of government for the service of the public.

<sup>5</sup> Petitions to have bills brought in must be addressed to the "governor and council and to the "house of delegates." (U. H. J., June 24, 1711.)

to the northern Indians. The industrial condition of the province was very bad.<sup>1</sup> During the "consuming war" many industrious planters had suffered, and "the ruin of families in the province has sensibly affected the fortunes of much the greatest number of inhabitants."<sup>2</sup> Clothing was so difficult to obtain that manufactures had been set up in the province.<sup>3</sup> Crops had been poor for several years, and this summer, through lack of rain, the tobacco crop was so burnt up that Hart felt encouragement must be given the planters.<sup>4</sup> In his opening speech to the legislature Hart expressed the hope that "trade now being free and open, through conclusion of the treaty of peace, there is a fair occasion of restoring the province to its former flourishing condition." He promises to assist all he can therein, but the delegates fear "the lowness of the ebb to which this province is reduced" is such that, even in peace, without royal aid, Maryland will not be able to recover her lost circumstances nor prevent total ruin of the tobacco trade.

Hart advises the reviving of good laws and the making of new ones for their prosperity, and presents some directions of Queen Anne with reference to this last matter. These are eight in number:

(1) That due support and observance of religion be provided, and all debauchery, drunkenness, swearing, and blasphemy may be discountenanced and punished. On these points the house of delegates answers that the laws are sufficient, and if any justice of the peace is not executing them they hope Hart will remove him.

(2) That there be an act restraining inhumane severities by ill masters or overseers toward servants or slaves; that maiming Indians or negroes be punished with a fit penalty, and that the punishment for killing Indians and negroes be made death.

The house replies there is already a law concerning the treatment of slaves, which they will inspect and make more

<sup>1</sup> April 29, 1715, L. H. J., lower house, in answer to Hart's address speaks of "present poverty of this province."

<sup>2</sup> Hart's speech of June 22, 1714.

<sup>3</sup> S. P. O., April 16, 1713.

<sup>4</sup> Hart to board of trade, July 11, 1714. Board of trade later suggested that pitch tar and hemp be produced in Maryland and gave directions therefor. (U. H. J., April 21, 1720.)

stringent if necessary. The latter part of the direction they ignore.

(3) That stocks and public workhouses for the employment of poor indigent people be provided in convenient places, and that idle vagabonds be restrained from burdening the people.

With an air of satisfaction the house states that provision has been made for such persons as are objects of charity, and that vagabonds are so discountenanced by county courts that there are few or none of them in Maryland.

(4) That further supplies necessary for defraying the charges of government be raised; that the public arms be better preserved and kept ready fixed, and that storehouses be settled throughout the province for them. Accounts of disbursements, the Crown acknowledges, should always be laid before the assembly.

The lower house professes that they will always raise sufficient supplies and that, although provision has already been made for the care of the public arms, they will do more if necessary, being thankful for the Queen's interest in the matter.

(5) That for the better administration of justice a minimum property qualification be fixed for jurors.

(6) That creditors of British bankrupts who have estates in Maryland may obtain satisfaction of their claims therefrom.

The house says there are already statutes covering these two points.

(7) That no act be passed lessening or impairing the revenue.

The house rejoins that they would rather enlarge it, if they could, being good subjects.

(8) That no law be passed affecting the property of subjects in Great Britain, unless it be provided that it shall not go into effect until eighteen months after passage in time of war and twelve months in time of peace, to give opportunity to know the royal pleasure therein.

Hart began at once to serve the province, "employing his utmost efforts," and on the second day of the session suggested that the Virginia law with reference to frauds in tobacco might be worthy of adoption in Maryland.

The tobacco industry, which employed 100 ships and 1,600 seamen yearly, was most important,<sup>1</sup> and it was necessary that

<sup>1</sup>Scharf I, 381, upper house approved of law and sent it to lower house (U. H. J., June 27).

“trash” should be separated from the good tobacco and that the annual output of 30,000 hogsheds should preserve its good reputation. In this case, as in many others, the assembly eventually adopted Hart’s suggestion, but not at the session when it was made.

As important as any specific recommendation is one of Hart’s, at this session, that letters be sent to the agent in England to get the opinion of some of the Queen’s counsel and other eminent lawyers as to what statutes are in force in Maryland. The laws are dubious and uncertain, and, though Maryland claims part in common law, it is denied the benefit of some statutes, as plantations are not named therein.<sup>1</sup> The lower house feared that this matter would take up time, and as the season is inconvenient for a session, suggest that the question be postponed until next session.<sup>2</sup>

The committee on laws on June 25 reported that three of the temporary laws would soon expire and should be reenacted at this session: Those regulating the militia, the officers’ fees, and for relieving the inhabitants from some aggrievances in the prosecution of suits at law. We note that these temporary acts were important ones. McMahon<sup>3</sup> notes the “general disinclination in Maryland to the enactment of permanent laws.” He rightly attributes this to the fact that “no change could be made in such laws but by some new act of legislation requiring the proprietary’s assent; and the assemblies were always unwilling to render themselves dependent upon his will for relief from a law which might be found, by experience, to be inconvenient or oppressive.” “They preferred temporary laws,” continues McMahon, “which would expire by their own limitation and might be reenacted if found salutary.” Especially was this the case with revenue bills, as the colonists could thus control the purse strings.

The militia bill<sup>4</sup> produced little debate and continued the previous law, providing for the enrollment of the people in troops and companies under the control of a colonel appointed for each county.

<sup>1</sup> U. H. J., June 28, 29, upper house does not see how it can lengthen the session, but does not press matters (July 2).

<sup>2</sup> Ordinarily a vote to postpone until the next session was held equivalent to one to lay on the table or postpone indefinitely.

<sup>3</sup> P., 282.

<sup>4</sup> Act of 1714, ch. 111.

The fee bill was a constant cause of friction between the proprietary and, his officials on the one hand and the popular representatives on the other. A chronic disease lurked in the body politic which reached an acute stage when either side was obstinate. At each reenactment the house of delegates tried to reduce the emoluments of the officials, and the council, itself largely composed of the proprietary's officers, strove to have the old bill reenacted. The houses were fairly amicable now, but when the lower house sent up this fee bill, changed to suit their views, the upper house<sup>1</sup> protested. The new fee table would discourage men of good learning, integrity, and parts from accepting some of the inferior offices, and would also lessen and debase the state and dignity of the superior officers, who are most useful in the province and ought to be handsomely supported, according to their several characters, not only for the sake of their own merit and capacity, but also for the honor of the Government. Though they insist on the old fee table, the council state they are willing to suppress and punish any officer guilty of bribery, extortion, negligence, or any unfaithful misdemeanors, according to the utmost severity of law.

To this message the house of delegates<sup>2</sup> retorts that, in many particulars, the fees are exorbitant and tend to oppression of the people, and the bill now submitted provided decently for the support of judicial and ministerial officers, considering the multiplicity of their business. They remind the council that in 1709 the latter body had promised to join in a revision of the fee table, whenever a captain-general should come.

The council<sup>3</sup> refuse to recede and say the present fees are in no-way exorbitant, considering the little advantage the several officers have had from tobacco for many years. The lower house<sup>4</sup> yielded on the last day of the session and continued the old law, as they were desirous to keep good correspondence with the council and end the session with the same good temper with which it opened.

In reenacting the third temporary act, there was another controversy,<sup>5</sup> in which the lower house yielded again. From

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<sup>1</sup> U. H. J., June 30.

<sup>2</sup> L. H. J., July 1.

<sup>3</sup> U. H. J., July 1; upper house also objected that the penalties against sheriffs were too heavy.

<sup>4</sup> L. H. J., July 3, act of 1714, ch. 5.

<sup>5</sup> Act of 1714, ch. 4.

the preamble of the act as passed we learn that, because of losses the provincials sustained from the closing of the continental markets during the late war and the capture of their tobacco cargoes by enemies at sea, the people have become "vastly indebted." Their "miserable and deplorable circumstances" are "much heightened and aggravated" by suits being brought against them in the provincial court at Annapolis, though they live in the remotest parts of the province. The result is truly dreadful. Many of the people "daily desert their habitations and remove themselves to plantations and colonies where they are far less serviceable to her sacred Majesty and her revenue of customs of tobacco." The act was designed to remedy this evil. As originally introduced in the lower house, it provided that claims under £100 or 30,000 pounds of tobacco shall be sued for in the court of the county where the debtor resides. The council<sup>1</sup> pointed out that by this bill, if a debt be of £250 and all but £19 have been paid, there is no remedy, for the provincial court takes cognizance of no sum under £20 and county courts of no debt over £100. The bill was amended,<sup>2</sup> to permit such action to be heard in county courts, and then seemed to be satisfactory. At this juncture, however, the lawyers of the province step in.<sup>3</sup> Charles Carroll, the proprietary's agent, claims that this bill infringes the prerogative by limiting the jurisdiction of the provincial courts, limits the power delegated Hart to erect courts, and opens a great gap for partiality, as it provided for the trial of causes amongst the debtor's relations and friends. The bill visibly attacks trade, for British merchants dealing with the provincials must employ twelve agents to attend the various county courts,<sup>4</sup> whose judgments are generally so erroneous that their jurisdiction should rather be diminished than increased. Then, too—and, I fancy, to Carroll and his brothers this was a most important argument—the bill will lessen the practice of lawyers in the provincial court and thus discourage learning.

<sup>1</sup> U. H. J., June 26.

<sup>2</sup> Section 5.

<sup>3</sup> Petition, June 29, hearing by upper house, June 30; similar act previously passed had not met with objection in England.

<sup>4</sup> Hart inquired, U. H. J., June 28, whether justice is well administered in county courts and whether some of them have not delayed business. The council says complaints have come of only one or two, but they agree that for future clerks should yearly send copy of "doggets" with reason of continuance and adjournment contrary to law.

Philemon Lloyd, secretary of the province, added to these arguments others—such as that, by the constitution of England, the jurisdiction of the county court is very low because men of power often sway it, and that the debts were what caused people to leave the province, not the few 100 pounds of tobacco extra from the costs in the provincial court.

As a result of this hearing, the upper house reduced the maximum of the jurisdiction of the county courts to £20 or 5,000 pounds of tobacco. Hardly had the lower house agreed to this amendment, when their clerk, MacNamara, petitioned the council that a clause about attorneys' fees be added to the bill. The house of delegates sent up the bill engrossed without this clause, which the council recommended. That body stated that the merchants of England may justly complain that for want of due encouragement given attorneys they can not get fit persons to prosecute actions.<sup>1</sup> Finally, a conference committee was appointed and both houses agreed to its report, which was that when the total debt sued for or the balance recovered in the county court be over £10 sterling or 2,000 pounds of tobacco, the attorney should have 200 pounds of tobacco as fee. If a lawyer refuse to take a suit for this fee or ask more, he is to be fined 500 pounds of tobacco and be suspended from practice for a year.<sup>2</sup> This bill was found to be of such utility that it was successively reenacted down to the Revolution. In the discussion over this bill we first meet Carroll and MacNamara. In the light of future events, it seems strange to find the latter an official of one house and championed in his cause by the other. Carroll and Hart were already showing their opposition to each other. Early in the session<sup>3</sup> Carroll suggested retaliation, in the return for some unjust charges said to be laid by Virginia on Maryland tobacco. Hart replied that "if Virginia does wrong, it is no rule for us to walk by."<sup>4</sup> A week later Carroll was summoned before the council to state why a law should not be passed releasing Peter Sewell, who had lain three years in Calvert County jail for a debt of £80 to London merchants, clients of Carroll. We know not what Carroll said, but may judge that it was not very satisfactory, from the fact that, as

<sup>1</sup> U. H. J., July 1, 2. Some little friction here. House of delegates desires to avoid messages, which delay the session. Macnamara could not attend hearing against bill because of his duties as clerk.

<sup>2</sup> Not in bills as printed by Bacon.

<sup>3</sup> U. H. J., June 25, July 3.

<sup>4</sup> U. H. J., July 1.



soon as he left the room, it was unanimously resolved and made a standing rule that when a person is called by the council to give them satisfaction, such person shall only answer directly to the questions proposed without offering anything further. The fact was that Carroll led the Roman Catholics, and because of that fact could not be at peace with Hart, the head of the Protestants. The lower house showed its fondness for Hart at this session by passing without demur a bill granting him 3 pence per hogshead of tobacco exported<sup>1</sup> so long as he should continue governor. There was no governor's house, and this was to compensate him for being forced to rent a dwelling. Hart's salary came from one-half of the 2-shilling duty on each hogshead. Further remuneration his instructions forbade him to receive from the province. It will be noted that the fierce struggles of contemporary Massachusetts over the governor's salary are unknown here.

Hart made inquiry with reference to another part of the 2 shillings,<sup>2</sup> the 3 pence appropriated for arms and ammunition. This was a different tax from the 3 pence for public charges, which was appropriated by an especial bill. Lower house also made inquiry as to the expenditure of the ammunition tax and,<sup>3</sup> stating that they believe a considerable sum is due the public thereon, asked that it be spent in building storehouses. They make arrangements at once to have one built of wood on the public grounds at Annapolis.<sup>4</sup> Hart was already planning a much more substantial structure, and induced the delegates to postpone the work. Meanwhile the arms should be hung up in the county court-houses.

Just before the end of each session of the assembly the committee of grievances<sup>5</sup> was accustomed to make its report. This year it referred to two inveterate abuses—one, that several places of profit were in the hands of one person, which was bad for public business and a discouragement for qualified persons; and a second, that the places of profit and especially

<sup>1</sup> U. H. J., June 24, 25, 30. Hart expresses thanks. Council provided that it be sterling money; for if it were not, only traders would gain, Marylanders paying them in sterling, not ready money. Lower house (J., July 2) did not consider building a governor's house this session because of lack of time.

<sup>2</sup> U. H. J., June 28; U. H. J., October 7. Hart had accounts ready to lay before lower house. Act of 1714, chapter 1.

<sup>3</sup> L. H. J., July 2.

<sup>4</sup> Dimensions 25 by 10, and 10 feet pitch, planed within and without, and shingled. Capt. Thomas Dowra built it.

<sup>5</sup> L. H. J., July 3. On this day the assembly was prorogued.

sheriffs' offices are sold to the highest bidder, and therefore the inhabitants are aggrieved and oppressed, through the commissioning of persons incapable and of too mean capacities and estates. There had been an attempt to remedy this grievance in 1709, but it still remained. Sheriffs were always viewed with suspicion by the popular delegates. Though their term is for three years, by clandestine, secret, understood practices they continue in power many years.<sup>1</sup> They give too slender security for executing their duty, though they are in a manner county treasurers, on whose credit and good demeanor depend the credit and interest of all those who act in public stations.

Religious matters as well as secular demanded Hart's attention. He called together the clergy of Maryland in the month of June and propounded to them queries as to the state of affairs. Twenty clergymen<sup>2</sup> were present and told him that God is duly served throughout this province on Sunday according to the Book of Common Prayer, in every parish where there is an incumbent, and on holidays also in many parishes. The communion is duly administered, the churches are sufficient in number, though some should be put in better order. Most parishes give the clergymen<sup>3</sup> but a bare competency. Glebes are totally lacking in some parishes, while in others they are very poor. Most parishes have been furnished with parochial libraries through the energy of Rev. Thomas Bray, the former commissary; but some have never received a library, which is unfortunate. Every minister is principal vestryman in his parish, and all acknowledge the jurisdiction of the Bishop of London. The remote clergy ask that a councilor be deputed to inspect them. We are told that in the whole province none administer the sacred office without being regularly ordained. In every church there is a table of the prohibited degrees of marriages, and the provincial law against incest is severe. The clergy discountenance all immorality, but complain that the penalty against fornication is too light and that a law is needed against the "damnable sin of polygamy."

<sup>1</sup> Anne Arundel County had an especially objectionable sheriff. So had Cecil in 1720.

<sup>2</sup> U. H. J., June 26. Hawks's *Eccles. Contribs.*, II, 137 and ff.

<sup>3</sup> A pleasant light is cast on the clergy by a vote of the assembly on October 8, 1714. Gabriel d'Emiliane, rector of Christ Church in Calvert County, went to England, and the other clergy promised to officiate for him, that his family might receive his salary. He was shipwrecked and died, and the assembly voted his widow his salary.

The Church of England had been established in Maryland in 1692, as soon as the Crown Government began, and was then supported under the law of 1704, providing for an annual tax of 40 pounds of tobacco for each taxable person. "Many worthy" persons were among the clergy, but Hart was forced to write to the Bishop of London<sup>1</sup> that "there are some whose education and profession are a scandal to their profession," and to express amazement that "such illiterate men came to be in holy orders." From the inefficient character of the Anglican clergy many proselytes were made by the Jesuits. This became so grave a difficulty that Hart meditated using his authority to constrain the Jesuits "from entering the houses of dying persons."<sup>2</sup> It was a difficult matter to get rid of the worthless clergymen. So inconclusive were the proceedings in one<sup>3</sup> instance that Hawks speaks of the establishment "as so profligate in some of its members that even the laity sought to purify it, and yet so weak is its discipline that neither clergy nor laity could purge it of offenders." Both the clergy and the governor asked for a bishop, but in vain.<sup>4</sup> In Maryland, as there was an establishment, the Society for the Propagation of the Gospel had no missionaries, and so there was absolutely no control of the incumbents. A commissary, or representative of the Bishop of London, could only "warn and rebuke," and so his influence was small.<sup>5</sup> Yet it seemed better to revive this office than to do nothing, and so in 1716, in answer to Maryland's request, two commissaries were appointed,<sup>6</sup> Rev. Christopher Wilkinson for the Eastern Shore and Rev. Jacob Henderson for the Western Shore.<sup>7</sup>

During the summer of 1714 Queen Anne died; but before the arrival of the dispatches, sent over in two special vessels, announcing the accession of King George, Hart had a second time called together the assembly.

An important matter is broached by Hart in his opening speech,<sup>1</sup> on October 5. Commands have been received from

<sup>1</sup> Hawks, II, p. 139.

<sup>4</sup> *Ibid.*, II, p. 142.

<sup>2</sup> *Ibid.*, II, p. 140.

<sup>5</sup> Grambrall's Ch. Life in Col. Md., p. 79.

<sup>3</sup> That of William Tibbs, U. H. J., May 4, 1715.

<sup>6</sup> Vide Hart's address, U. H. J., April 28,

<sup>7</sup> Hawks, II, p. 150.

1716.

<sup>8</sup> He gives another good piece of advice, that "moderate proceeding in debate will best facilitate business," and "if you dissent, please express yourselves so as to evidence clearness of judgment and not a warmth of resentment." Modern legislators might take this thought to heart to their advantage.

England to have the body of laws revised. Hart says this should be done as inexpensively as possible. The house of delegates respond they will try to perform this and all other duties to God, and that they would "take care to acquit themselves as dutiful and loyal subjects to our sovereign and a grateful people to your excellency and faithful servants to our country." These aims were faithfully pursued by the assemblies while Hart was governor. A conference committee was appointed in the matter of revision,<sup>1</sup> but just as they began their work unofficial news came from Philadelphia that Queen Anne had died. This, of course, put an end to the session, the only act passed being one for laying the public levy.<sup>2</sup> The crop had failed again, and on Hart's suggestion the house of delegates agree to his issuing a proclamation prohibiting the exportation of indian corn from November 10 to March 10. The council rejected the further suggestion of the delegates that no execution issue for a year.<sup>3</sup> The delegates said the tobacco crop was very short, and it would be a hardship to the people to go to jail because of that. The council was desirous of helping the "honest and well-meaning sort of people," but think this<sup>4</sup> repugnant to the laws of England and Maryland. On October 9 Hart prorogued<sup>5</sup> the assembly and then took "a long and expensive journey," possibly to Philadelphia, to assure himself of Anne's death. On October 27 he called his council together. He had no official news as yet, but London papers he had procured gave such definite information that, without delay, at noon on October 28, Prince George of Brunswick Lunenburg was proclaimed King at the statehouse. The militia made a handsome appearance; the governor and council took oaths to the new King; Hart gave a "generous and splendid entertainment," and orders were sent to each county to have the King proclaimed there.<sup>6</sup>

<sup>1</sup> L. H. J., October 8.

<sup>2</sup> Hart recommended Blakiston's salary of £100 be included therein, and says the province offered £120, but Blakiston took the smaller sum.

<sup>3</sup> L. H. J., October 8; U. H. J., October 9. There might be suffering if the winter was severe.

<sup>4</sup> U. H. J., June 3, 1715.

<sup>5</sup> For a month, but unless notified the members need not expect a session. Official notice did not arrive until October 29. Council decided then that nothing further as to proclamation was needed. Further official notice on April 13, 1715.

<sup>6</sup> U. H. J., June 13, 1715. Hart celebrated George's birthday also. Coun. Proc.

When the official notice came the council ordered the liturgy to be changed, and November 25 to be observed as a thanksgiving day, wherein all should abstain from bodily labor and repair to the parish churches, where the clergymen shall read service and preach suitable sermons. We must have no Jacobitism here in our province of Maryland.

On January 18, 17 $\frac{4}{5}$ , summons were issued for a new assembly, and the embargo was taken off the exportation of indian corn, since the winter had been mild and favorable and there was no more danger of a scarcity. There was danger, however, that Hart might not meet the assembly he had summoned. On January 29, 17 $\frac{4}{5}$ , Lord Stanhope, secretary of state, directed the board of trade to prepare a commission for Brigadier Richard Franks as governor of Maryland. This aroused Benedict Leonard Calvert at once, and on February 2 he petitioned the King to continue Hart, or if he objected to him, to appoint Calvert himself.<sup>1</sup> The King granted this petition at once, and two days later Stanhope directed the board of trade to renew Hart's commission.

On the 20th of the same month Charles Calvert, third Lord Baltimore, died, aged 85 years. The pretext for the suspension of proprietary government in the province having died with the Roman Catholic proprietary, a restoration was now confidently looked for; but before it came Benedict Leonard died, on April 5, 1715. His son Charles,<sup>2</sup> then about 16 years of age, became the fourth proprietary and fifth Lord Baltimore, and his guardian, Francis, Lord Guilford, at once petitioned for a restoration of the government. This was granted "to give encouragement to the educating of the numerous issue of so noble a family in the Protestant religion," and a new commission was issued to Hart, bearing date May 30, 1715. Lord Guilford was a man of Jacobite bearings, and, though he is said to have corresponded rarely with that party after 1714, he was arrested for complicity in the Atterbury plot. He then retired to Paris, joined the Roman Catholic Church in 1728, and died in 1734. Such an influence as his over the young proprietary must have given rise to some apprehensions among the more extreme Hanoverians and Protestants in Maryland.

<sup>1</sup>Scharf, 1, p. 379.

<sup>2</sup>Ibid., p. 380.

Meantime, the assembly of 1715 had met on April 26, completed its task, and adjourned on June 2. During this session, lasting little over a month, forty-nine laws were passed, covering the most important concerns of the province. McMahon's encomium on this session, the last ever held in Maryland under the royal government, is well deserved. He writes in 1830<sup>1</sup> that "the assembly of 1715 is as conspicuous in our statute book, even at this day, as the 'blessed Parliament' in that of England. A body of permanent laws was then adopted, which, for their comprehensiveness and arrangement, are almost entitled to the name of 'code.' They formed the substratum of the statute law of the province, even down to the Revolution; and the subsequent legislation of the colony effected no very material alterations in the system of general law then established. Several of the important statutes of that session are in force to-day." Such an achievement as this sheds splendid luster on Hart's administration, and he is entitled to a fair share of the praise.

This was a new assembly, and so, after the council had taken the oaths and the delegates had chosen as their speaker Robert Ungle, of Talbot County, both houses assembled in the council chamber and the governor approved of the speaker. The latter then, in due form, "disabled himself to undergo so weighty a charge." Hart, of course, refused to accept his declination of the office. Sometimes the speaker a second time,<sup>2</sup> "decently and submissively addressing himself to his excellency, offered several reasons disabling himself \* \* \* and made humble suit to be discharged." In this case, too, Hart would "noways admit of" the declination, being well satisfied "of the speaker's skill and knowledge."

The next act in the drama follows English precedent, as do they all. The speaker asks that the delegates may have "freedom of speech, as of right and custom they have used, and all their ancient and just privileges and liberties allowed them, and that in anything he shall deliver in the name of the lower house, if he shall commit any error no fault may be imputed to the lower house, but that he may resort to them again for declaration of their true intent, and that his error may be pardoned 'and that as often as necessity' for the public good shall require it, he may, by the discretion of the

<sup>1</sup> History of Maryland, p. 282.

<sup>2</sup> E. g., April 23, 1716.

lower house, have access to his excellency." When this was granted the assembly listen to the governor's speech.<sup>1</sup>

On this occasion Hart begins by referring to the new monarch's "lenity and consummate judgment" as of happy omen for his subjects.<sup>2</sup> The Protestant religion is safe because of George's "noble disposition, generous courage, and numerous offspring." So a "continued series of happiness" may be expected. It now behooves the assembly to revise the laws<sup>3</sup> and do it diligently, as long and frequent sessions are a grievous burden to the people. He kindly warns them not to expect too much, since "few things attain perfection at the first setting forth," and this "province is but in its infancy."

He makes two special recommendations that they should enact laws to promote "industry in your trafficks" and "useful learning, but these also are here in their tender age, so they must be nourished with time, care, and patience."

In trade he recommends that they try to reform abuses in the revenue from tobacco, but need not trouble themselves to pass an act encouraging the tobacco trade, as there is an English law thereon. Indeed, though the "inhabitants of the province with commendable industry cultivate tobacco, there are "spacious tracts of this fertile soil, especially on the Eastern Shore, not fitted for tobacco. There good hemp can be grown, and Maryland might "supply Great Britain with cordage forever."<sup>4</sup>

Few send their children to sea, and the result is that there is a want of seamen, which is a "mighty obstacle of trade." Hart advises that if a "certain number of the youth maintained by the several counties be yearly apprenticed as sailors, in a few years there would be a provincial navy."

The education of youth ever lay close to Hart's thought, and he is grieved that "many young men of admirable natural parts grow up without the least improvement of art." It is now "more than time to repair that neglect that is shown

<sup>1</sup> Menanara clerk again.

<sup>2</sup> He calls him "one of the greatest as well as one of the best of kings that ever yet swayed the British scepter."

<sup>3</sup> U. H. J., April 29, 1715. Hart sent down Anne's instructions to lower house, May 7 (L. H. J.) Committee on laws resolve to send a "complete body" home May 9. Hart sends lower house message to hasten; they have done little in fifteen days. Hart's instructions concerning the passage of laws are given in U. H. J., May 15. They were often disregarded in the laws passed at this session.

<sup>4</sup> A hemp law was introduced by delegates, but council rejected it as it put composition for money too high (U. H. J., May 26).

to learning here," and it lies at the assembly's door "to lay a foundation for sufficient schools that your sons may increase in knowledge as well as in wealth and honor." If this be done "you will have blessings of the poor in this life, and posterity will praise you as benefactors." Alas! this blessedness was lost.

The year before<sup>1</sup> the clergy reported that the case of schools is very bad, good schoolmasters are very much wanting, and those professing to teach were very insufficient and rarely had the certificate from the Bishop of London as required by law.<sup>2</sup> At the abortive session preceding this one Hart had complained that it was "deplorable" that there was "no better provision for the education" of the numerous youth, there being but "slender support for one school on the Western Shore and none on the Eastern Shore of this so wide a bay."<sup>3</sup>

At this session the rector and governors and visitors of the free schools came to the assembly with a petition.<sup>4</sup> They complain that the funds for free schools are "so insufficient to answer the pious design of having a free school in each county that they can keep up only one such school—King William's School, in Annapolis—and this with difficulty." They also ask that their quorum<sup>5</sup> be reduced, since they live so far from each other, and that their title be confirmed in a piece of property in Annapolis.<sup>6</sup> The two latter requests are attended to, but their urgency to obtain more funds is ignored.

The libraries, which Rev. Thomas Bray established in several parishes, were for reference; that at the capital, the great Provincial Library of 1,100 volumes, the remnants of which collection are in St. John's College Library to-day, was for circulation. The books were taken out, and, alas, not always brought back, so that when Hart had an inventory made several were missing, and the assembly resolved that the sheriffs publish notices commanding persons having books

<sup>1</sup> U. H. J., June 26, 1714.

<sup>2</sup> On May 3, 1715. Hart tells council he will insist on schoolmasters taking oaths and showing certificates of good capacity before he will give them licenses to teach and will obtain lists of schools and school teachers from the county courts.

<sup>3</sup> U. H. J., Oct. 5, 1714.

<sup>4</sup> U. H. J., May 13, 1715.

<sup>5</sup> Act of 1715, ch. 1.

<sup>6</sup> July 6, 1697, Anthony Workman gave £150 sterling for a house on a lot which Governor Nicholson gave to King William's School on condition he might use the house for life and then leave it to the school. The "Kentish Ordinary" was kept there. Workman was dead. His heirs refused to surrender it.



belonging to "the Public Library" to bring them to Rev. Mr. Skippon, who, as rector of St. Ann's parish, Annapolis, was ex-officio librarian.

In the preparation of the laws of this session there was engaged one of the first famous American lawyers, Andrew Hamilton, who achieved most of his fame while practicing his profession at Philadelphia. He was at this time a resident of Kent County, and had thence been elected to this assembly. He was absent from the opening of the session<sup>1</sup> on account of being in attendance as counsel at the supreme court in Pennsylvania. He appeared on May 4, after the sergeant-at-arms had been sent for him, and was at once added to the committee on laws. How much of the excellence of the session's work may be attributable to his efforts we know not. It is interesting to know that his greatest fame probably came to him from an acquaintance he made in Maryland. John Peter Zenger, a young printer, came from New York, at the conclusion of his apprenticeship, to try his fortune in Kent County. In 1720 he petitioned, with apparent success, for leave to print a "body" of the session laws for each county, and he was naturalized by the assembly in the same year.<sup>2</sup> He went back to New York and, when accused of libel some fifteen years later, sent for the lawyer, whom he had doubtless known in Maryland, to act as his counsel. How brilliantly Hamilton filled that position is known by all.

The first act<sup>3</sup> passed was one for the recognition of George I as King. The assembly represented the Protestant party, and so this was easily passed and was loyal in tone.<sup>4</sup> Indeed, in their answer to Hart's opening speech, they thanked him for his most expeditious "proclamation of the King," and for "his extraordinary zeal and diligence for His Majesty's service."<sup>5</sup>

At this time there were intimations of lurking Jacobitism, and "secret insinuations" were uttered that George's seat was in danger.

<sup>1</sup>L. H. J., May 2, 4, 1715. Fined 45/ costs for absence. Men who went home without permission were also fined. (L. H. J., July 28, 1716, and May 8, 1718.) The delegates, however, were privileged from arrest for twenty days after adjournment of the assembly. (L. H. J., May 3, 1718.)

<sup>2</sup>Act of 1720, ch. 18.

<sup>3</sup>Act of 1715, ch. 1.

<sup>4</sup>At Hart's suggestion. Introduced in council probably as the more dignified body. L. H. J., May 4, passed both houses day of introduction.

<sup>5</sup>L. H. J., April 29, 1715. June 3, 1715.

The address to Hart, adopted at the close of the session,<sup>1</sup> breathes a loyal spirit and also pays a high tribute to Hart's character. He had been with them nearly a year, and they found him "affable, kind in conversation," "prudent in the management of public affairs," "careful to consult the ease and benefit of the people," and "scrupulous to maintain the prerogative and just rights of the Crown." These were no feigned words. John Hart was one of the best colonial governors.

Besides the recognition act, the one legalizing proceedings taken in Queen Anne's name after her death,<sup>2</sup> and one repealing all laws which had been revised at this session,<sup>3</sup> there were forty-six chapters in the act of 1715. Of the one relating to education we have already spoken. The establishment of religion was not changed, but provision<sup>4</sup> was made when there is no incumbent in a parish the poll tax should be used for repairing, completing, furnishing, or even building a church, and if not needed therefor to be applied to the purchase and stocking of a glebe for the use of the minister. This we see is evidently a result of the meeting of the clergy in 1714, and we shall note other instances where an act recommended to one session is passed at a future one. Evidently the legislators of the province were not to be hurried in their deliberations.

Another act<sup>5</sup> "for the better security of His Majesty \* \* \* and for extinguishing all hopes of the friends" of the "pretended Prince of Wales," provided a form of an oath of abjuration to be taken by all public officers, and especially by vestrymen, in lieu of the former oaths. The Protestant party is beginning to cut off Romanists from the privileges they had enjoyed.

The only other religious matter<sup>6</sup> which engaged the attention of the assembly was a petition of the Quakers to the council stating that the "Yearly meetings" at West River and Tred Haven, which they had held for about forty years for

<sup>1</sup> L. II., J. June 3, 1715.

<sup>2</sup> Act of 1715, ch. 8.

<sup>3</sup> Act of 1715, ch. 49. Most of these are revised laws. Act of 1719, ch. 16, specifies what laws were now repealed.

<sup>4</sup> Act of 1715, ch. 24, repeals 1704-12. Taxables were male persons, except Anglican clergymen and paupers and female slaves above 16 years of age. Slaves past labor might be so adjudged by the county court and then ceased to be taxables. Act of 1715, ch. 45, sec. 5.

<sup>5</sup> Act of 1715, ch. 30, repeals 1704-11.

<sup>6</sup> U. II., J., May 10, 1715.

the worship of Almighty God, had been disturbed by the sale of liquor near by. From this "arise drunkenness, fighting, hooping, hollowing, swearing, cursing, wrestling, horse racing, and abundance of wickedness and immoralities." This must be stopped at once, and henceforth let no liquor be sold, save at licensed ordinaries, nor any sports be carried on within 2 miles of either meeting house. Let the sheriffs see that order is preserved. Sheriffs were always disliked and the committee of grievances state that sheriffs take advantage of the law which decrees the date when money shall be paid them, but not when they shall pay it out again to the public creditors. In some cases they will not pay it out without reward.<sup>1</sup> This is scandalous, and when the committee of laws examine into it they find not only this but other ill practices need to be guarded against, and so a comprehensive act is passed "for the direction of sheriffs in their offices."<sup>2</sup> Annual appointment by justices of the peace is provided for the constables and the other executive officers of the law, and the duties of their office are defined.<sup>3</sup> It would seem that sheriffs were not the only public officers who had abused their positions. Early in the session<sup>4</sup> Hart calls the attention of the council to "embezzlement" of records, which had taken place in several counties, and recommends that a law be passed against it. The assembly replied with a provision<sup>5</sup> that conviction of "embezzling, impairing, razing, or altering" any record, whereby a freehold should be defeated or injured, should involve the terrible punishment of forfeiture of all property, standing in the pillory for two hours, and loss of both ears.

The election of future assemblies took a considerable part of the attention of this one, and the act now passed<sup>6</sup> was the basis of Maryland's electoral system for nearly a century. It changed little the previous system of one poll for each county, conducted by the sheriff in English fashion, and continued the limitation of suffrage to 40-shilling freeholders,<sup>7</sup> but it

<sup>1</sup> L. H. J., May 4, 1715.

<sup>2</sup> Act of 1715, ch. 46, repealing previous laws, 1704-57, 1709-6, 1713-1.

<sup>3</sup> Act of 1715, ch. 15.

<sup>4</sup> U. H. J., May 1, 1715.

<sup>5</sup> Act of 1715, ch. 11.

<sup>6</sup> Act of 1715, ch. 42, reenacted after the restoration of the proprietary act of 1716. (Steiner Citizenship and Suffrage in Maryland, p. 25.)

<sup>7</sup> It provided that only resident freeholders could vote, and not all persons having a visible estate in the county. (L. H., January 12; U. H. J., May 23, 1715.)

added a clause imposing a penalty on a qualified voter who did not exercise his franchise. This compulsory voting law was a suggestion of the upper house.

An attempt was made to limit the number of members to two for each county and one for Annapolis.<sup>1</sup> This was partly through economy, to reduce the charge of the assembly. Each councillor received 110 pounds of tobacco per diem, and each delegate 100 pounds of tobacco and itinerary charges<sup>2</sup> besides. At first the delegates seemed favorably inclined to the lesser number, but the lower house finally rejected the plan, and passed the bill with the old number of delegates retained. It is possible the delegates feared a smaller body might be more pliable to outside interest, and so refused any compromise<sup>3</sup> in the matter. The militia law was re-enacted, and in connection with it we find a proposition from Hart to fine those who refuse to accept commissions and are absent from training. The delegates agree to fine absent officers but say there is no use to fine those refusing to accept commissions, since so few do so.<sup>4</sup>

Evidently military titles were popular at that early day. The danger of war was by no means an imaginary one, and great care was taken that the public arms<sup>5</sup> be not embezzled by their eustodians. The colonels of militia, the chief military officers in each county, were ordered to report the condition of the arms<sup>6</sup> since 1709, and Hart now broaches<sup>7</sup> the project of building a permanent stone house at Annapolis, which he was to see realized. After the adjournment he brings the matter before the council, stating that a well-built powder house might be useful for other occasions, particularly as a council chamber, and "to receive the country, as well as strangers, on occasions so requiring it, especially in time of assemblies." He recommended that they build such a house from the proceeds of the 3 pence per hogshead for arms, and pay 10 shillings, or some other fit sum, as ground

<sup>1</sup> Hart's instructions urged him to do this.

<sup>2</sup> Apparently an abuse had grown up and law committee said expenses for boats and ferringes ought to come out of itinerary charges. (L. H. J., May 12, 1715; May 18, 21.)

<sup>3</sup> Upper house suggested three members from each county. (J., May 23, 1715.)

<sup>4</sup> L. H. J., May 21.

<sup>5</sup> Three pence of the 2-shilling tax went therefor by act of April 30, 1679.

<sup>6</sup> Col. John Contee had received arms. In 1706 he had died, his widow Mary had since married Philemon Hemsley, and they were rigidly called to account for the arms. (U. H. J., May 10, 11; L. H. J., May 11, 9, 1715.)

<sup>7</sup> U. H. J., May 3, 1, 1715.

rent for the needed land. At the next session the upper house, having approved of Hart's suggestion, recommended to the delegates that a handsome house be built for the public arms, and that a council room be included in the plan, and also an apartment to "receive the country and strangers that may resort to his excellency the governor on any public occasions."<sup>1</sup> The lower house agreed to this plan, and £500 sterling were appropriated therefor. The building was erected forthwith. In 1718 it was reported as completed<sup>2</sup> and well done, so that the assembly agreed to pay Thomas Cooke, the contractor, £100 more than the contract called for.

The laws with reference to the Indians were revised.<sup>3</sup> The committee of aggrievances recommended that careful men be appointed in each county to hear and determine disputes between whites and Indians, and the bill gave power to the governor to appoint such. Other provisions forbade the sale of liquor to Indians, the kidnapping and sale of friendly Indians out of the province, and endeavored to prevent the frequent false rumors about Indian risings. While the assembly was in session, an apparently groundless one caused the dispatch of one of the delegates to the frontiers, to encourage the inhabitants and learn what the truth was.<sup>4</sup>

Laws were amended and reenacted<sup>5</sup> prohibiting the transportation of any person from the province without a pass, lest servants, felons, and debtors might escape from the jurisdiction, and laying a heavy duty on the importation of rum, negroes, and Irish servants. These duties were rather for the purpose of limiting importation than for revenue, and that on Irish servants had a distinctly religious purpose, "the prevention of importing too great a number of Irish Papists."

The slave code was thoroughly revised<sup>6</sup> and regulations were made for the conduct of masters toward those under

<sup>1</sup> U. H. J., August 8, 9, 1716.

<sup>2</sup> U. H. J., May 6, 1718.

<sup>3</sup> Act of 1715, ch. 16, L. H. J., May 4, 1715.

<sup>4</sup> U. H. J., May 17, 30, 1715; L. H. J., May 17, 31, 1715. Gifts were made to friendly Indians. These last had reported they had seen "naked Indians." It is possible the latter may have been Tuscaroras.

<sup>5</sup> Act of 1715, ch. 19, 34.

<sup>6</sup> Act of 1715, ch. 46. A petition was presented that a white woman marrying a negro be made slave for life, but the old law was retained, providing that she be bound out for seven years (U. H. J., May 3, 1715). The committee of aggrievances thought that law should be made against negroes gathering without leave of masters. House says law already provides against it (L. H. J., May 16, 17, 1715; U. H. J., May 23, 24, 1715). Heavy penalties were put on those aiding runaway servants.

their control, so that there should not be undue cruelty. For example, only 10 lashes could be given, for any offense, by a master; but, if he carried a peculiarly disobedient or wicked slave to a justice of the peace, that the latter could order a greater penalty, up to 39 lashes. The council proposed that manumission be limited, as in Virginia. Against this the delegates nobly protested. To restrain manumission is to discourage probity of well-deserving negroes or mulattoes, as their masters can not otherwise recompense them.

Other important acts with reference to property were those concerning bounds of lands,<sup>1</sup> an important matter with the rough surveys of the day, concerning conveyance of landed property,<sup>2</sup> and concerning rights of persons to town lands.<sup>3</sup> The whole testamentary law of the province, which was administered by the commissary-general in the prerogative court at Annapolis and by the deputy commissaries in the counties, received a careful amendment and was reenacted.<sup>4</sup>

The tobacco trade, of course, received attention.<sup>5</sup> Early in the session Hart proposed that all tobacco be shipped between October 1 and May 10 in each year, as the longer it hangs the more it loses scent, freshness, substance, weight, and goodness in every respect, and finally only the shape and nothing of the substance of the tobacco remains. Further, the limitation of time of shipment will quicken trade and cheapen freight. The council suggested a conference committee from two houses. This met at Hart's own house, and to it he proposed his plan. He added that the backwardness in preparing the tobacco for shipment was largely due to the delay in getting cask timber properly seasoned and ready to be set up, and this delay of the coopers was largely because of the uncertainty of their pay. Would it not be well to have a law appointing a time yearly to get such cask timber ready and for the coopers to set it up, and granting them the right to take their pay by execution? "The worm bites more" the

<sup>1</sup> Act of 1715, ch. 45, U. H. J., May 28, 1715. Proposed in council. Delegates thank them for proposing so useful a law.

<sup>2</sup> Act of 1715, ch. 47. Committee of grievances complained that fines and recoveries had been proposed in provincial court to cut off entails. The house said this is a grievance and tends to ruin of many (L. H. J., May 15, 17, 1715).

<sup>3</sup> Act of 1715, ch. 32.

<sup>4</sup> Act of 1715, ch. 39. Clause was inserted preventing the commissary-general from taking fees from estates less value than £30 (L. H. J., May 15, 17, 1715).

<sup>5</sup> U. H. J., May 1, 6, 1715, L. H., May 3, thanked Hart for offering to join in conference and have it at his house.

ships which are forced to stay, and so the sloops, flats, and other craft which carry Maryland's staple would find the proposed law highly beneficial. Under it they would receive a timely cargo, and further, if ships drop in all the year round, the tobacco buyers will purchase no more of it at a time than just from hand to mouth, while if the whole crop went to market at once, the buyers would purchase a whole year's stock at once, and thus the price would always be kept up. Thus argued the governor, and the conference accepted all his plan, save that they decline to fix any date by which the tobacco should be ready. In the pressure of other affairs, however, the matter seems to have been laid aside.

An act was passed<sup>1</sup> for securing merchants' tobacco, to prevent alteration of marks on hogheads and to forbid the packing of "any frost-bitten, trashy, ground leaves, or small, dull scrubs, or any stalks, stems, wood, stones, dirt, or any other manner of trash, or old, decayed tobacco in the inward parts of such hogsheads, when the generality of such tobacco as shall be packed in the outward parts is good, sound, and merchantable." "Small, dull, scrubby tobacco, and ground leaves" might be packed separately and labeled so as not to impose on purchasers. Tobacco being the great source of revenue for government,<sup>2</sup> the act ascertaining the gauge of hogsheads and for laying impositions on tobacco per hoghead, for the support of government, was always an important one, especially as it included a composition in tobacco for the lord proprietary's alienation fines and quit rents. Another important act was one requiring all weights and measures used in the colony to be yearly compared with the standards kept by the justices of each county, that tobacco and other things might be given in full quantity and weight.<sup>3</sup>

While the assembly was sitting came news of the death of the old Lord Proprietary, and a letter from Benedict Leonard, the new lord, announcing to Hart that the King is about to restore him the government. Hart,<sup>4</sup> after taking advice of the council, announces these things to the delegates<sup>5</sup> and requests them to provide an act to take the

<sup>1</sup> Act of 1715, ch. 22.

<sup>2</sup> *Ibid.*, 1715, ch. 38.

<sup>3</sup> *Ibid.*, 1715, ch. 10.

<sup>4</sup> U. H. J., May 30, 1715; L. H. J., June 1.

<sup>5</sup> Lower house thanks Hart for news, and expresses joy that proprietary is Protestant.

place of the payment of 12 pence per hogshead of tobacco,<sup>1</sup> which had been given to Charles for his life in return for his receiving tobacco at 2 pence per pound, in lieu of quit rents and alienation fines. The house passed the gauge act we have noticed above, granting a duty of 18 pence per hogshead.<sup>2</sup> The old duty was to be continued for four months more.

An old quarrel was recalled for a moment this session. Sir Thomas Lawrence, who had been secretary of the province twenty years before, had claimed that the ordinaries' fines, or profits from saloon and hotel licenses, as we should say, belonged to the secretary. The popular party and Colonel Blakiston claimed they belonged to the country. Baltimore said he had given them to a relation when he had the government, and would reclaim them were the government again in his hands. Hart thought they belonged to the Crown,<sup>3</sup> and asked the assembly to find out what is their amount. He stated he was willing to have the proceeds used for building a governor's house. The council and lower house agree that they would be willing by law to devote them to this purpose, but the lower house say they are not willing to appropriate additional money therefor for two reasons: They wish, first, to know how much the fines are, and secondly, the circumstances of the province are too low. Hart writes he is content to share their present circumstances, though he thinks it for the honor and interest of the province to have a governor's house.<sup>4</sup>

The house of delegates, as usual, had complaint to make of the revenue officers,<sup>5</sup> who are too many in number, and take extravagant salary from the 3-pence duty for arms while they should be paid from the fines and forfeitures. Hart responds that he will have the number of receivers reduced to one, and will see that salaries are taken from the proper source.<sup>6</sup>

<sup>1</sup> Hart told them that Benedict Leonard was not satisfied with the old duty, vide U. H. J., July 29, 1716.

<sup>2</sup> Act of 1715, ch. 19. In 1718, the upper house raised the question as to the disposition of this tax (U. H. J., May 5). Carroll is summoned and says Benedict Leonard knew nothing of the law. Carroll sent the money to England. Carroll was authorized by Benedict's executor to take all his personal estate in the province and took a half year's rent as consideration for sending the money to England (L. H. J., May 7).

<sup>3</sup> U. H. J., May 16, 19, 25, 26, 1715.

<sup>4</sup> The delegates offer to pay Hart's rent. He asks that they appropriate for repairs to his house.

<sup>5</sup> U. H. J., May 15, 1715.

<sup>6</sup> He investigated the matter and reported at a later session.



Here, as ever, we see both parts of the government working together for the public good.

The procedure of the courts received much attention. Laws were passed establishing<sup>1</sup> court days in the counties, providing<sup>2</sup> that execution be suspended during the summer and autumn months that people might not be imprisoned to the ruin of their crops, regulating<sup>3</sup> the drawing of jurors, directing the manner of suing out attachments,<sup>4</sup> determining the period of limitations for various kinds of actions,<sup>5</sup> providing what shall be good evidence to prove foreign and other debts,<sup>6</sup> and permitting the taking of special bail.<sup>7</sup> Other statutes authorized speedy recovery of small debts before a single justice of the peace,<sup>8</sup> rectified the ill practices of attorneys and fixed a table of fees to the attorney-general and lawyers,<sup>9</sup> arranged for the better administration of justice in the courts,<sup>10</sup> for the more speedy recovery of debts, for preventing officials to plead as attorneys in their courts, and for the collection of amercements.

It was decreed what damages should be allowed upon protested bills of exchange,<sup>11</sup> and several acts for the benefit of poor debtors were passed.<sup>12</sup> One of these was for the relief of the "languishing prisoner," Peter Sewell. Following the rule that no private act be passed without hearing those opposed, the council again had Charles Carroll before it.<sup>13</sup> He opposed the relief of Sewell, saying he mortgaged two negroes several times over and, therefore, is least worthy of commiseration. Hart had been for some time interested in this case and generously repeated a previous offer to give £5 toward making up Sewell's debt, if his creditors have no compassion. Let us hope Sewell, when released, was more care-

<sup>1</sup> Act of 1715, ch. 14.

<sup>4</sup> *Ibid.*, ch. 40.

<sup>7</sup> *Ibid.*, ch. 28.

<sup>2</sup> *Ibid.*, ch. 33.

<sup>5</sup> *Ibid.*, ch. 23.

<sup>8</sup> *Ibid.*, ch. 12.

<sup>3</sup> *Ibid.*, ch. 37.

<sup>6</sup> *Ibid.*, ch. 29.

<sup>9</sup> *Ibid.*, ch. 48.

<sup>10</sup> Act of 1715, ch. 41. The justices of Dorchester sold the amercements to the sheriffs for several years at a considerable loss. This is a grievance, say the delegates, as it not only lessens the public credit, but also gives power to the sheriff to burthen the people with several fees (L. H. J., May 4, 1715.) Lower house asks what has been done with amercements in provincial court. Hart says they were given to clerk of council, but small in amount. This explanation was satisfactory.

<sup>11</sup> Act of 1715, ch. 7.

<sup>12</sup> L. H. J., May 15, 16; act of 1715, ch. 17, 20, 21.

<sup>13</sup> L. H. J., May 15. Council May 2, on petition of John Leatherwood, an old and poor inhabitant of Baltimore County, who has been a "good liver," recommend justices of that county court to discharge him from paying public levy.

ful in his future financial dealings. Other private acts<sup>1</sup> were passed, though in general the assembly declined to interfere when there was a remedy in the courts.<sup>2</sup> One of the attempts to secure the passage of a private bill, brought in what looked like an attempt to bribe a member of the council, to whom the applicant wrote that he would reimburse him for any trouble<sup>3</sup> and "would have sent money, but it is a thing a body can not trust everybody with." Two other questions of privilege came up at this session. Hart complained to the council that Mayor Josiah Wilson, delegate for Prince George's, deserved public censure for scurrilously reflecting on him and a second delegate by calling the latter the governor's agent.<sup>4</sup> At another time the governor said one of the council had broken his oath to keep secret its proceedings. In neither case was any answer made.

Revised laws were passed concerning adultery and fornication, cursing, and drunkenness,<sup>5</sup> and for the speedy trial of criminals.<sup>6</sup> The law for ascertaining the height of fences and redressing the great evil arising from the multiplicity of useless horses that run in the woods<sup>7</sup> caused some discussion,<sup>8</sup> but was finally passed. The jealousy of the northern province was shown by an act prohibiting importation of grain, bread, beer, and horses from Pennsylvania.<sup>9</sup>

Such was the legislation of the assembly of 1715, a noble legacy from the royal to the proprietary province.<sup>10</sup> Twice before, in 1692 and 1704, the laws had undergone revision, but neither revision remained long in force. This work of Andrew Hamilton and his colleagues remained the law, with little change, till long after the State of Maryland succeeded the province.

After the adjournment of the assembly<sup>11</sup> Hart called his council together. Grave tidings had come. There was now no question of checking illegal trade with the French, of seeing

<sup>1</sup> Act of 1715, ch. 2, 3, 5, 6, 35.

<sup>2</sup> E. g., U. H. J., May 4, 1715.

<sup>3</sup> L. H. J., May 9.

<sup>4</sup> U. H. J., May 20, 30.

<sup>5</sup> Act of 1715, ch. 18.

<sup>6</sup> *Ibid.*, ch. 27, 34.

<sup>7</sup> *Ibid.*, ch. 26.

<sup>8</sup> *Ibid.*, ch. 31.

<sup>9</sup> U. H. J., May 26, 27; L. H. J., May 27.

<sup>10</sup> In this year the merchants of Maryland sent an address to the Crown that Hart's administration had been to the general satisfaction.

<sup>11</sup> A curious petition of two men against the inhabitants of Queenstown, in Queen Anne County, remained unanswered. They complained of oppression because hogs and live stock are raised on the lots in that town, which is so small that the animals trespass on the petitioners' lands. (L. H. J., July 30, 1716.)

that the vessels clearing from Maryland provided themselves with Algerine passes so that they might be safe from the fierce pirates, or of fixing fees in chancery. News had come from Governor Spotswood, in Virginia,<sup>1</sup> that the terrible Tuscarora war had broken out in South Carolina and two hundred families had been massacred at Port Royal.<sup>2</sup> Spotswood sends aid to South Carolina and asks that Maryland do the same and watch her own safety. The council say they can spare no arms; all must be saved for our frontier, whither Hart agrees to go in person. A month later<sup>3</sup> the council met again. The Potomac Indians were said to have gone out. Arms were ordered to be sent to the frontier counties of Prince George, Baltimore, and Cecil. Blakiston<sup>4</sup> was instructed to buy £500 worth of arms and ammunition. A special levy on the province was decided to be made by Hart and any three of the council, if they see need.<sup>5</sup> Lead and powder in the possession of tradesmen should be at once condemned for the public use and lodged with the "colonels."<sup>6</sup> After another month<sup>7</sup> the excitement had calmed down. Spotswood writes again there is no damage from the Virginia Indians. He wishes Maryland, Virginia, and North Carolina would raise 1,500 men and attack the Indian towns. Virginia has already sent 300 men to South Carolina, in return for which South Carolina pays each volunteer and sends a slave to work in his place. May not Maryland make a similar contract? Maryland declines to do so, and the danger dies away. No other Indian trouble disturbs the administration.

Hart was a man of infirm health. He complains of ill health in the fall after his arrival in the province,<sup>8</sup> and is severely ill when Bladen transmits for him the proceedings

<sup>1</sup> Vide Conn. Proc., April 13, 1715.

<sup>2</sup> His autograph letter is preserved in the council proceedings. Spotswood had never met Hart.

<sup>3</sup> July 12, 13, 1715.

<sup>4</sup> May 31, 1717, Blakiston reported he had spent £257 10s. 4d. for arms and had saved the rest of the appropriation for future use, as arms were so high at the time of the great rebellion.

<sup>5</sup> The governor had a certain discretionary power over the country stock of arms and ammunition, in case of exigency, e. g., May 31, 1717, he reported having given the necessary amount to several vessels to protect them from pirates.

<sup>6</sup> L. H. J., July 18, 1716. Richard Ledger, of Prince George, is paid for a horse which died in removing arms to oppose the threatened attack from Indians.

<sup>7</sup> August 24, 1715.

<sup>8</sup> Letter of September 14, 1714.

of the assembly and the report of the Indian war. When he recovered he found his position a perplexed one. A letter had come from Lord Guilford announcing that Benedict Leonard was dead and that he was guardian of the young Lord Charles.<sup>1</sup> As such he had nominated Hart "lieutenant and chief governor of the province," and the nomination having royal approval, the commission and instructions would follow at once. They came, but brought no official intimation that the government was restored to the proprietary. The council advise Hart to pay no attention to the new commission until this preliminary be positively known. For four months the doubt continued, and the sessions of the courts of chancery and appeals were postponed until it could be known under whose commission they could sit.<sup>2</sup> Finally the news came, and the council were sent for at Christmas time. The weather was violent and hard and deep snow lay on the ground when the members met on the evening of December 27. The next day at noon, in the public court-house, the accession of the new proprietary was proclaimed and Hart's new commission read.<sup>3</sup> The assembly was dissolved and a new one summoned. Thus the rule of the proprietary was restored over Maryland, though much of the former authority had been shorn away. Theoretically, the second Charles had the same rights as the first; practically, the twenty-five years since the grandfather had ruled had made a vast difference. An unknown youth was at the head of affairs. The people seemed to have cared but little for the change,<sup>4</sup> and, save for the religious quarrels which now arise, the course of events moves on precisely as before. The Protestants knew that the young proprietary was of their faith, but were slightly apprehensive lest he might lean too much toward the adherents of his grandfather's faith. The Romanists were hopeful that they might gain greater influence and be restored to their position in old times, before the proprietary lost the province.

For the time being little difficulty on this score appeared. The new assembly met<sup>5</sup> on April 24, 1716. Matthew Tilgh-

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<sup>1</sup> Council proceedings August 24.

<sup>2</sup> Council proceedings September 3, 1715.

<sup>3</sup> Council records lost from this on. As early as May 19, 1719, Hart told the council that thirteen months' proceedings of that body while Bladen was clerk were missing.

<sup>4</sup> McMahon, p. 280.

<sup>5</sup> MacNamara chosen clerk lower house and approved by Hart. Records of upper house for this session are lost.

man Ward, of Talbot County, was chosen speaker, and, according to custom, "decently and submissively disabled himself to undergo so mighty a charge," but finally accepted it. Hart's opening speech refers to the new government and to his personal knowledge of the "gentle and sweet disposition" of the young lord. He hopes that the province will be happy under the new régime.

The new government made it necessary to change the style of all laws, and Hart showed his thoughtfulness and kindness of disposition by asking the assembly to "make the change as light as possible to the people, for I am so sensible of the burden of long and frequent assemblies that I am willing to ease them on any part." This was somewhat of a sacrifice from him, as he received a fee as chancellor for affixing the seal to every law. In the end it was found necessary to reenact less than half a dozen acts.

Another point in his speech showed his interest in the people. It was for the interest of the well to do, of whom the assembly was composed, to have quit rents paid in sterling money, according to the terms of the grants, but such payment was a hardship to the common people. A "particular ought always to give way to the general good;" therefore Hart entreats the assembly to remember the poor and pass a composition act, which Lord Baltimore has agreed to accept upon his solicitation. A failure to pass this act would disappoint Baltimore in the due receipt of rents, would injure tenants holding lands under condition of punctual payments, would check the future cultivation of remote and forest parts of the province, and would cause the remoter inhabitants to desert their yet but poor improvements.

This session again was to prove an abortive one. Scarcely had Hart delivered his address when a rumor came that the proprietary had died and that King George is taking all the proprietary governments under royal rule.<sup>1</sup> The assembly ask to be prorogued, as, if this rumor be true, their session would be in vain. Hart grants their request. Before he has found the rumor groundless and called them together again a most vexatious incident occurred.

Early in June Hart went to Cecil County, and in his absence,

<sup>1</sup> McMahan, p. 271, speaks at some length of this movement. Baltimore petitioned against it and estimated his Maryland revenue at £3,000 per annum.

on June 10, the anniversary of the pretender's birth,<sup>1</sup> "some wicked, disloyal, and traitorous persons" loaded four of the great guns on the court-house hill in Annapolis and fired two of them. This was in honor of the pretender, in contempt of King George, and "to the extreme surprise, dread, and disquiet of all" good people. Hart hurried back and issued a proclamation offering a reward for the guilty persons and pardon for any who would turn state's evidence. William Fitz Redmond, a nephew of Charles Carroll, and Edward Coyle were arrested on suspicion. A special court of oyer and terminer was called. Jacob Fox confessed he fired one of the guns, and sufficient evidence was secured to convict the person who fired the other gun.<sup>2</sup> He was whipped and pilloried. Fitz Redmond and Coyle were convicted of "drinking the pretender's health and speaking contemptibly of the King."<sup>3</sup> and were heavily fined and imprisoned until the fines were paid. This trial was the beginning of the struggle between the Anglican and the Romanist parties. Thomas MacNamara appeared as attorney for the defense. He was a relation of Carroll and a man of stubborn disposition and of fiery temper.<sup>4</sup> In Philadelphia,<sup>5</sup> where he had lived before coming to Maryland, he had been presented by the grand jury for his insolent behavior in court, especially for appearing there at one time with his sword drawn, and had been disbarred upon this presentment.<sup>6</sup> He was now especially audacious and insulting in his bearing, and is reported to have publicly said: "Let me see who dares try them by this commission."

<sup>1</sup> The insurrection in England headed by the pretender had broken out, and the Maryland Jacobites were so elated with hopes of their imaginary success, so open and glaring in their presumption, that Hart felt obliged to check them by a proclamation dated February 14, 1716. (Hart's speech, April 5, 1720.)

<sup>2</sup> Vide U. H. J., July 26, 1716.

<sup>3</sup> Strangely enough complaint was lodged against Hart for permitting this. The complainant, however, was widow Mary Contee, who married Philemon Helmesly.

<sup>4</sup> Barrister at law of Gray's Inn. (U. H. J., May 15, 1719.)

<sup>5</sup> Penn. Col. Rec., 11, 457, June 6, 1709. Remonstrance to assembly by freeholders and inhabitants of Philadelphia, and by them to the governor and council, with request for relief, that MacNamara "vilified and brought" Queen Anne's "royal power into contempt" by saying at the supreme court in Philadelphia, on April 11, 1709, that the Queen had no right to issue the order in council of January 21, 1702, allowing Quakers to affirm, and that the order was against the law. The petitioners ask that MacNamara, for this offence "and others, his insolency's, contempts, and abuses, openly and scandalously committed in the city sessions in the face of the court and country, as by an address or representation of the same, by the grand jury presented, fully is demonstrated, may not have liberty to practise as an attorney at law in any of the courts of this province."

<sup>6</sup> The presentment states that the report is that he was previously disbarred in Maryland. (U. H. J., April 29, 1718; vide May 6.)

From this time the feud between him and the governor was unrelenting. With Carroll there also arose a difficulty which ended only when Hart left the province. Carroll came forth and said he had a commission from the proprietary which gave him such power that he could and would discharge the fines.<sup>1</sup> This was a most distasteful announcement to Hart and he ordered Carroll to record his commission in the secretary's office as "a public trust or employment." Carroll steadfastly refused to take the oath, and Hart told him plainly he should not regard him as a public officer, but would render him all requisite assistance in the execution of any matters with reference to the proprietary's "lands or other private matters."

The facts in the case seem to have been that immediately upon Charles's accession Carroll had gone to England, and making representations of his long and faithful service as private agent of the late proprietary, had secured a commission as "chief agent, escheator, naval officer,<sup>2</sup> and receiver-general of all rents, or arrears of rents, fines, forfeitures, tobaccos, or moneys for lund warrants, of all ferries, waifs, strays, and deodands; of duties arising from or growing due upon exportation of tobacco aforesaid, tonnage of ships, and all other moneys, tobaccos, or other effects in any manner or ways now due, or hereafter to grow due, whether by protested bills of exchange or otherwise." He was empowered to appoint inferior officers. It is doubtful whether Guilford fully realized how extensive the powers were, but Hart did at once, and tells the assembly at their meeting on July 17, 1716, that the grant of such powers to another, and "especially to a Papist, is such a lessening of his power and dishonor to his character that he has desired to be recalled unless he can be restored to the full authority he held under the Crown." Powers formerly exercised by Hart's deputies are now put into the hands of Carroll's, who have taken no oath for the fulfillment of law.<sup>3</sup> Hart has always advised the proprietary "never to employ any papists in the public affairs of this province." Yet, probably because Carroll had deceived the

<sup>1</sup> Hart's speech of April 5, 1720, said that he remanded the prisoners to custody.

<sup>2</sup> Upper house, August 1, 1716, said royal instructions gave Hart as governor in Maryland the power to appoint naval officers.

<sup>3</sup> 12, 14, ch. 11, for encouragement of shipping. 15, ch. 11, on trade; 7 and 8 William, 111, for preventing frauds. Upper House, July 20, 1716, resolved Carroll could not be naval officer without taking the oaths.

lord proprietary and his guardian, he is made receiver of the duties for defense,<sup>1</sup> public charges, and support of government.<sup>2</sup> He had the impudence to ask Hart to account for 3d. for arms,<sup>3</sup> when Hart flamed out upon him with "I would as soon give you up my heart's blood." Clearly Hart has much to tell this assembly. He asks the council what is their opinion. They all agree that, not having taken the abjuration oath, Carroll can not hold public office, and all save one answer that the proprietary has been imposed upon.<sup>4</sup> They summon Carroll before them and ask him whether he told the authorities in England that he was a Roman Catholic, that he would not take the oaths, that acts of Parliament forbade his holding these offices?<sup>5</sup> How came he to take these offices knowing he could not take the lawful oaths? Who are the surveyors-general and deputy surveyors of the land office?

Carroll answers<sup>6</sup> that he did not tell these things in England, because it was not necessary and because he was not asked to make a profession of faith. He knows an oath should be taken by each public officer and is willing to take one for the punctual performance of duties. For some years he had held without question all the offices that the proprietary could grant, and so did not hesitate to take the additional ones. Further he does not believe that the act of abjuration is of force in the province. His faithful services and the justness of his accounts were the only inducements which led the proprietary to appoint him. As to surveyor-generals, Walter Pye and Henry Sewall, two Roman Catholics, claim that office, but there was difficulty about their qualification.<sup>7</sup> Twelve commissions had been sent over and been put in their hands to be delivered to Protestants, where such formerly held office,<sup>8</sup> but these could not be delivered on account of the council's action. So Carroll declared the land office closed, and thus the people suffered detriment.

<sup>1</sup> 3d. each per hoghead.

<sup>2</sup> 12d. per hoghead exported.

<sup>3</sup> Hart in speech of April 5, 1720, said Carroll's commission authorized him to receive all money for the support of government and for purchasing arms and at a time when the pretender was scarce suppressed.

<sup>4</sup> Lloyd, the sole exception, dryly said he could not tell the proprietary's motives.

<sup>5</sup> July 19, 1716, U. H. J.

<sup>6</sup> July 25, 1716, U. H. J.

<sup>7</sup> U. H. J., July 20, 1716, July 25.

<sup>8</sup> Lower house says every county except Queen Anne's, and possibly that, has had a Catholic surveyor, and so Carroll might nominate such again. (L. H. J., July 7, 1716.)



The council said Carroll evades their queries,<sup>1</sup> and Hart told him not to say he has closed the land office, but to have the surveyor's commissions delivered and let the work go on. Hart told the council that before sailing for England Carroll showed him a petition he intended to present to Benedict, asking that Roman Catholics have an equal share of the offices. Hart persuaded him not to present it, saying, "I would oppose it with the utmost vigor," and Carroll promised not to do so; but evidently has broken his word.<sup>2</sup> With this unfaithful dealing Hart taxed him before several of the council.<sup>3</sup> "I acknowledge that I gave that representation," answered Carroll, "but it did not import that the Roman Catholics might be qualified for employments, but that they might be unqualified for them." "A poor and jesuitical evasion," Hart calls this remark. "By what claim of right," asks the governor, "did you offer that representation; for by law Romanists can not hold ministerial offices without qualifying?" "By the instrument granted by Cecilius, Lord Baltimore, which I believe was burnt in the State house," cried Carroll, with great vehemence, "and we will insist on that right, and if the Lord Guilford will not admit of our right, we will appeal to higher powers."

Other matters troubled Hart. The proprietary is using a great seal in England. Thus the governor's perquisites are diminished, while he is held answerable for that over which he has no control, and the people are under great uncertainty, which is still more intolerable. Another difficulty arose in connection with the act for the composition for rents.<sup>4</sup> Henry Darnall, a Romanist, had offered Baltimore £300 annually for his "growing" rents. Carroll says, provided the farmer paid the officers' salaries, he believes Baltimore would have accepted this offer. In fact, there seems to have been made out a lease to Darnall, though the latter, seeing the opposition, said he would not accept it, as he did not wish to "interfere with the interests of his lordship and the country." Hart felt that this lease hurt his honor, as he had sent to Baltimore a pro-

<sup>1</sup> Hart said Carroll's commission gave him appointment of rangers contrary to provincial law, which gave it to the governor. Carroll answered he had not thought of the law, and could not help what Baltimore put in his commission.

<sup>2</sup> Vide Hart's address of April 5, 1720; also that of April 22, 1718.

<sup>3</sup> Speech of April 22, 1718.

<sup>4</sup> U. H. J., July 20, 1716; July 23, 24.

posal for the satisfaction of the rents, and assures the delegates that the lease was until now unknown to him. Hart's intention to resign was made known to the delegates on July 20 when he sent them Carroll's commission. He tells them he shall not omit to inform the proprietary of such men, as "either have or may lead him into improper measures so as to give any disgust to the well affected." He attributes his treatment to the advice of some persons who either are not capable or unwilling to give better counsel.

Two days after the session opened<sup>1</sup> the delegates sent Hart an address, which was really an answer to his speech of the preceding April. It is loyal in tone; expresses hope that in the future they shall be happy as in the past, and that the "aspiring interest of those that term us heretics will not be able to prevail against us." It thanks Hart for his words, promises cooperation with him, and praising his "impartiality" and "unbiased administration," states that if the provincials could select a governor he would be their choice.

When Hart announced his purpose to resign, both houses prepared an address<sup>2</sup> condemning "the late audacious, wicked, and rebellious practices of many disaffected persons," which "gave us no small uneasiness," and praising Hart's "zeal" and "exact discharge" of duty. The address expresses regret that the "artifices of every evil-designing person" should influence the proprietary to "lop off so many branches of Hart's power," and especially because the "branches" are given to papists. They promise to address Baltimore against Hart's leaving, "the very thoughts whereof strike such a damp upon our spirits that we are scarce able to express the miseries we may well fear are about to break in upon us by an inundation of popery and slavery."

The address was accordingly drawn up.<sup>3</sup> It is more loyal to Hart than to Baltimore, and, while congratulating the latter upon his restoration to power, pointedly reminds him that this is due to the change of faith. They thank him for the continuance of Hart in office, and complain that his power has been reduced by placing part of it in the hands of a "protestant papist" who will not take the oaths, and by granting in

<sup>1</sup> U. H. J., July 19, 1716.

<sup>2</sup> U. H. J., July 27, 1716. Signed by all members of the houses.

<sup>3</sup> U. H. J., July 30, 1716. Lower house drew it up.

England blank commissions under the great seal. They ask that Hart's old power be restored and that he be thus induced to remain as governor and continue to foil the plans of "those papists who have very lately soared to that height of impudence as to threaten his person and undervalue his power." The address warns Baltimore not to become obnoxious to King George nor to alienate from himself the people of Maryland, which would be the result of too great favor toward Roman Catholics. There was no danger the council would show them too great favor. A Romanist who "purely offers to take the oaths only for sake of a place" should not be appointed, even though recommended by Baltimore's English agent.<sup>1</sup>

The lower house was not one whit more complaisant. They adopted an address<sup>2</sup> to King George, congratulating him on his success in suppressing the pretender's invasion, referring to the benefits they had enjoyed as a royal province, and asking him to continue his influence for the preservation of the people and the Protestant religion, which has very many adversaries. They voted to repay Hart's expenses in the late disturbance,<sup>3</sup> and they sent for the sheriff of Anne Arundel County. "Why did you release Fitz Redmond and Coyle?" they sternly ask. He showed Carroll's receipt for the fines, and Carroll is sent for. The fines belong to the lord proprietary's prerogative, say the assembly, and not to his private estate, and Carroll, by receiving them without taking the oaths, has acted "contrary to the known laws of this province," and has made "an inroad upon our Constitution."<sup>4</sup>

Words were followed by acts, and the "better security of his Lordship's Government and the Protestant interest"<sup>5</sup> were provided for. The preamble to the act states that it has been found advantageous to Great Britain to exclude all persons from office who will not take oaths, and that here in Maryland the general assembly think themselves indispensably obliged to do their part in securing "to the proprietary and the people their share in these benefits, especially agreeable" to us who

<sup>1</sup> U. H. J., July 30.

<sup>2</sup> L. H. J., July 31, 1716. Blakiston to present it.

<sup>3</sup> L. A. J., August 3, 1716. Upper house same day recommended to lower house to pay Richard Evans for his services at that time.

<sup>4</sup> L. H. J., July 27, 1716.

<sup>5</sup> Act of 1716, ch. 5. Act in force throughout provincial history. It was introduced in the lower house. This act was the result of Carroll's acts, not of the acts of the Jacobites, as McMahon says on p. 281.

are under the immediate government of a Protestant<sup>1</sup> lord proprietor. After referring to the late Jacobite excitement in the province, and to the fact that the act of 1704 required all officials to take the oath of abjuration, the statute enacts that all persons now, or in the future, holding office in the province shall take the oaths of allegiance, abhorrency, and abjuration, and subscribe the test against transubstantiation. If persons refuse to take these oaths and still "presume to execute any office," their commission is declared void *ab initio* and they are liable to a fine of £250.<sup>2</sup> The oaths may be required again at any time while the office is held. If they have been taken by any person, and he afterwards be present at any Popish assembly and join in the "service at mass," he shall suffer the same penalty as above.<sup>3</sup> The management of the private affairs of the proprietary is especially exempted from the provisions of this act.<sup>3</sup> On the last point, there was some disagreement, as the lower house<sup>4</sup> at first did not wish even to exempt these, but it finally yielded to the insistence of the council. The delegates wished to have the officers named who were considered to be engaged in Baltimore's private affairs, but this was difficult, and brought up again the old quarrel about ordinary licenses,<sup>5</sup> and, as they did not wish to enter into that matter then, the subject was dropped.

Carroll disturbed the assembly at another point by questioning the validity of the laws passed in 1715. The delegates considered these laws as the entire code of the province and were very unwilling that the time and labor spent in framing them should be wasted. They refused to pass any laws save those which needed to supplement deficiencies, and declined to reenact the body of laws, inasmuch as their authority was undoubted. Carroll reminded the delegates that the King had not considered the acts before the restoration of the proprie-

<sup>1</sup> On July 27, Hart submits the council the fifty-seventh article of his instructions directing him to give liberty of conscience to all quiet persons save Papists. He says he has received no instruction contrary to this from the proprietary. The council agree that he ought still to obey the above article.

<sup>2</sup> At suggestion of upper house; one-half to free schools, one-half to informer.

<sup>3</sup> Added by upper house July 28, 1716.

<sup>4</sup> U. H. J., July 31, August 1, 4, 6, 1716.

<sup>5</sup> Hart tried to get the assembly to take action in this matter (U. H. J., August 2, 1716), and to fix ordinary licenses (U. H. J., August 3, 1716), but delegates refused, August 4, 1716 (L. H. J., July 21, 1716.) The upper house insisted that the law as to fines and forfeitures be reenacted so as to transfer the right to them to the proprietary. This was done. (Act of 1716, ch. 38.)

tary, but they answer him that the efficacy of laws dates not from the date of the royal consideration but the time of passage by the assembly.

There was not much legislation at this session. Seven of the twenty-one acts passed were private ones, and several of the others were rendered necessary by the change of rulers. The gauge act and that granting the proprietary 18 pence per hogshead was reenacted.<sup>1</sup> Over the first there was considerable discussion. Guilford had sent over drafts which he wished passed. In these the enactment is stated to have been made by the proprietary and the assembly, as was the custom before 1688. In the reign of Queen Anne, the governor had been mentioned as a separate estate, and the assembly determines to continue such mention.<sup>2</sup>

The revenue laws themselves caused some difficulty. The lower house agreed<sup>3</sup> to lay an additional duty of 6 pence per hogshead in full recompense to the proprietary for his rents and fines for alienation, provided the 3 pence tax for defraying the public charge be repealed, and its place be taken by an increased tax on negroes and Irish servants imported into the province. The upper house agreed to this, but Carroll, as Baltimore's agent, protested against the allowance of a percentage of the tax as fees for the officers collecting it. The upper house refused to raise any further sum as salary for the officers, and Carroll withdrew his objection, saying he did so without precluding Baltimore's right to show that he should not be so burdened.<sup>4</sup> Some days later Carroll wrote to Hart warning him not to sign certain laws,<sup>5</sup> in which phrase he plainly included the revenue ones, and directing him to turn over the residue of the revenue after deducting the governor's salary. This letter is at once transmitted to the assembly, which advises Hart to pay over the 18 pence tax, but not the 15 pence tax raised for support of government unless Carroll

<sup>1</sup> To continue five years, till the proprietary was of age. (Act of 1716 ch. 8, and 19, U. H. J., July 20.)

<sup>2</sup> Hart suggested the guardian's (Lord Guilford) name should appear. Lower house (July 21) objected that the proprietary is a body politic and is not mentioned in his natural capacity, therefore he can not be a minor. Hart yielded.

<sup>3</sup> L. H. J., July 29, 1716.

<sup>4</sup> Vide L. H. J., August 3, 1716, where lower house agrees to relieve Baltimore of part of the discount. Hart says he will approve it, if the assembly will repay him in case Baltimore makes him pay therefor.

<sup>5</sup> Conneil, August 1, 1716, asked Carroll to enumerate them. He said it would be very difficult.

takes the oaths. They pronounce the caution in Carroll's letter unintelligible,<sup>1</sup> a general threat against passing any laws, "designed to disturb Hart in his weak state of health,"<sup>2</sup> and for other secret ends. Carroll has "used a very indecent 'way and freedom' with Hart" in assuming to himself the liberty of directing him in so general a manner. This freedom had never before been "used by a subject to a governor." The council added that Baltimore's agents in Maryland and England "have given signal marks of their disingenuity." Hart then came to the assembly, and the assembly promised to reimburse him for any pecuniary loss he may suffer from signing the bills. He thanks them, signs the bills, complains of the "insults in his sickness" and the barbarous treatment received from Carroll, and prorogues the assembly. The message from Carroll came to Hart at night, at a time he was in such a dangerous condition that he was making his will.<sup>3</sup> The act raising an additional revenue from imported servants was passed,<sup>4</sup> but as we shall see did not receive Baltimore's assent. It was the only act passed at this session which he vetoed, in spite of Carroll's warning to Hart.<sup>5</sup>

Hart had always taken interest in the security of the public papers.<sup>6</sup> Shortly after his arrival he reported to the assembly that he had seen lighted candles in the court-house and secured an order that neither candles nor other fire be carried into offices in the court-house, and that the clerk of the secretary see that the back door be locked every night "before day-

<sup>1</sup> U. H. J., August 1, 1715, the last day of the session.

<sup>2</sup> Hart was sick with a violent fever about August 1, and as his instructions said nothing as to his successor in case of his death, he sent to the council to ask what should be done. An act is at once passed (Carroll making no objection) providing for the succession, first, of the president of the council, and then of its members according to seniority. This had been the custom when the matter was mentioned in instructions. (Act of 1716, ch. 21.) Baltimore soon gave similar instructions. (U. H. J., May 29.)

<sup>3</sup> Speech of April 5, 1729.

<sup>4</sup> Upper house suggested the duty be limited to the servants imported from foreign countries. Lower house objected, fearing the act would be eluded, as our more recent Chinese acts have been, and upper house withdrew amendment.

<sup>5</sup> One of Carroll's objections to the laws was that in case of war and a capture of the tobacco fleet, Baltimore, and his five brothers and sisters, would have no support for that year if they gave up their whole revenue for a tobacco duty. (U. H. J., August 7, 1716.) A message from the council to the delegates on August 6 asked that a clause be added that tenants pay tobacco rents in the county where the land is, that such debts have precedence over other debts, and that they may be levied by execution. The lower house objected to this, saying the land was good security. The upper house further said captains of vessels are alarmed and wish a clause permitting them to collect their portion of the tax from shippers of tobacco. As to this last, the lower house says the captains may retain all tobacco until paid.

<sup>6</sup> U. H. J., October 7, 1714.

light be shut in," and opened half an hour after sunrise every morning. Now, through his suggestion, an act is passed<sup>1</sup> for repairing the damages already sustained in the public records and for their future security. A committee was appointed to inspect the records. It reported that some had been lost, and a greater part of those remaining were much worn and damaged from the transportation from St. Mary's city to Annapolis, the want of good and sufficient books, and the negligence of officers. These old records are to be repaired at public expense, and for the future all clerks, who receive the fees of office, must give bond to provide good and sufficient books and deliver the records in good order to their successors. Those who have worked in the ancient records and understand their importance will bless the assembly of 1716 for their act, which continued in force throughout the province's history.<sup>2</sup>

All of the measures Hart advised were not carried. His plan to advance the credit of the province<sup>3</sup> was not transmuted into a law. On the other hand, the projects of the lower house were sometimes blocked. Especially was this the case with reference to the attempt to make Lloyd refund the sums received by him as councillor, while also receiving a salary as acting governor.<sup>4</sup> He claimed he held two different offices and had a right to both salaries. The upper house admitted that it "would have been more generous in him to have forgone" the councillor's salary, but it had been paid, and, while a second instance of this will be guarded against, it is not fitting to unravel the laws as to the past.<sup>5</sup> The delegates grow quite excited, accuse Lloyd of falsehood, and say that when councillors have offices of profit, they are never paid as councillors.<sup>6</sup> The councillor's allowance is only paid to those who have no other way to reimburse themselves for their

<sup>1</sup> Act of 1716, ch. 1.

<sup>2</sup> Vide U. H. J., July 21, 23, 1716. A report on the subject showing that progress was being made was given by the committee to lower house on June 7, 1717. 7 words=line, 15 lines=side=4 tob. pay.

<sup>3</sup> It dealt with payment of debts, vide U. H. J., July 24, 1716.

<sup>4</sup> The matter was postponed from session to session until Lloyd died. Then out of respect to his widow the matter was dropped, but the assembly resolved that no such future grant should be made. (L. H. J., May 30, 1719; U. H. J., May 29, 1719.)

<sup>5</sup> U. H. J., July 30, 1716.

<sup>6</sup> U. H. J., August 3, July 20. He received £52, 13.6 and 29580 pounds of tobacco as councillor while drawing salary as president. August 1, Lloyd had a public hearing before delegates, who resolved he should refund.

expenses in the service of the public. As president and acting governor he was a separate body, distinct from council, and bills were dissented from, because the word president was not in their style of enactment. He had the full negative over laws and received larger remuneration than all the rest of the council. Hart's sickness was one cause why the matter was not pushed further at this time.<sup>1</sup>

The evil practices of sheriffs receive the customary condemnation at this session.<sup>2</sup> It seems that the good people had been "greatly damnified and abused in their estates" by the sheriffs, who seized more goods on writs of fieri facias than were sufficient to satisfy the demands of law. They also kept the goods a long time before they sold them, and finally disposed of them privately, and sometimes for only a tenth part of their value. This is great loss to both debtor and creditor, and ruins their families. For the future, all goods seized must be appraised by four substantial freeholders named by the parties, and the amount due is to be turned over to the creditor at their appraisal.

Another act, permitting inhabitants of the province in their own proper persons to sue out writs when plaintiffs and give judgment when defendants, was passed, though the upper house at first objected<sup>3</sup> that allowing persons to appear in their own behalf as plaintiffs would enable ill-disposed persons to gratify revenge, and cause ignorant ones to mislay their actions, be nonsuited, and have to pay costs. The upper house was more successful in opposing a law allowing plaintiffs to have suits removed to the provincial court when the amount claimed as damages is less than 5,000 pounds of tobacco. In opposition, the council seems to be arguing in behalf of the poorer and debtor classes.<sup>4</sup> The delegates complain of the ignorance of attorneys in the county courts, and say a failure to pass the law will discourage trade and permit persons to evade the act for the recovery of small debts, but the upper house was stubborn and the act failed.

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<sup>1</sup> Complaints against John Rousby, receiver of taxes, were postponed for the same reason.

<sup>2</sup> Act of 1716, ch. 16. A sheriff who had been appointed to fill a vacancy petitioned for longer time to make collections. The council say a dangerous precedent. Sheriffs will die at inconvenient times for their successors. (U. H. J., August 1, 1716.)

<sup>3</sup> U. H. J., August 6, 1716.

<sup>4</sup> U. H. J., July 25, 26, 1716.



Much attention was given at this session to the act<sup>1</sup> amending the law offering a bounty for killing wolves, crows, and squirrels.<sup>2</sup> The upper house thought the amount paid was an intolerable burden, and suggested that an act be passed obligating each taxable to bring in 6 heads yearly or pay 4 pounds tobacco. The lower house, using a true socialistic argument, while admitting the charge is great, claims that the bounty "circulates among the taxable inhabitants." Every person, if he chooses and thinks it worth while, may kill as many as will defray his proportion of the charge. If the expense continues for several years, it may then be changed. Very well, answers the council, at any rate, let us prevent fraud and be sure that the same heads are not used twice to obtain a bounty. Why should not they be brought to county courts and burned by the youngest justice present, after oath taken by the person who brought in the heads that he slew the animals. The lower house agreed that the heads should be burned,<sup>3</sup> but a man can not swear to killing done by his servants, and bringing the heads to court would "discourage many from killing those vermin."

An additional cause of alarm to the Protestants came from the influx of Jacobites transported and sold as indented servants.<sup>4</sup> Shortly after the adjournment of the assembly of 1716, on August 28, Hart and the council issued a proclamation for the sale of 80 rebels transported in the ship *Friendship*, and on October 18 a second shipment of 55 men, mostly Scots, was received on the ship *Good Speed*.

These were all indented for several years.<sup>5</sup> The most prominent men of the province bought their services, and some, unfortunately, soon lost them, as the men ran away.

Hart's desires<sup>6</sup> were that the "gentlemen of the Romish

<sup>1</sup> The act of 1712, ch. 11, prohibiting sticking fish, was repealed (act of 1716, ch. 7), as it only affected those living at a distance from the water who may be discovered with fish. (L. H. J., July 25, 1716.)

<sup>2</sup> Act of 1716, ch. 2 (U. H. J., August 1, 1716; August 2, L. H. J., July 28). Last year 45,000 pounds paid St. Mary's; 46,000 pounds Charles; 45,000 pounds Kent; 51,000 pounds Prince George's; 62,000 pounds Calvert; 60,000 pounds Dorchester; 45,000 pounds Talbot; 27,000 pounds Cecil; 140,000 pounds Somerset; 24,000 pounds Queen Anne's; 26,000 pounds Baltimore; 40,000 pounds Anne Arundel. May 31, 1717, lower house again refused to repeal squirrel act.

<sup>3</sup> Lower house amendment excluded Indians from benefit of act. (U. H. J., August 3, 1716.)

<sup>4</sup> Scharf., 1, 385 pp.

<sup>5</sup> Hart's letter of April 28, 1717.

<sup>6</sup> Speech of May 29, 1717.

communion will prudently consider their own interest and will content themselves with the lenity of the government they live under." They have all privileges of citizens, save officeholding, and Protestants in Roman Catholic countries would regard this condition of things as an inestimable blessing." When we place ourselves in the position of the men of that day, we see that this was by no means an unnatural position.

The Protestants were counseled by Hart to show themselves such by their "charitable demeanor toward their neighbors of another persuasion, since it is no longer in their power to do you any injury."<sup>1</sup> "When I was a soldier," says the governor, "I learned this maxim: Whilst the enemy was in arms, to oppose him with a vigorous resolution; but when Providence pleased to bless the juster side with advantage, to treat them with humanity." Bravo! the ruler has the milk of human kindness in him and forgets the insults<sup>2</sup> the Papists have heaped on him, even that distressful time when Carroll wrote him a threatening letter, though he was dangerously ill with a fever and making his will, for he thought himself near death.

When Baltimore and his guardian received the proceedings of the assembly of 1716 they promptly vetoed the servants' importation<sup>3</sup> bill and held the gauge act for further consideration. They had given up the quit rents for "the good and relief of the poor and more numerous part of our people," and are surprised that the act gives Hart his salary directly, rather than to the proprietary for the use of the governor. This, "with our honor, we never can consent to," and the bill must be amended. As amended, it will benefit the "planter by the ease he will find in payment of his rent, and the trader by the advantageous proviso of reshipping free of tax the tobacco upon any loss that shall happen to them at sea in their homeward voyage. The act for the security of the peace is approved with great alacrity, that Protestants and Papists may clearly perceive that "your lord proprietary is

<sup>1</sup> Lower house, May 31, promises to accept this advice. (Vide U. H. J., April 5, 1720.)

<sup>2</sup> October 9, 1716, Carroll again made demand on Hart to recognize his commission, and warned him against signing act for better security of government. (vide U. H. J., April 5, 1720.)

<sup>3</sup> It did not allow Irish Protestants to come in free, and is dangerous to charter (U. H. J., June 2, 1717).

not, as he has been maliciously suggested by some, a Papist in masquerade, but a true Protestant of the Church of England, in which faith he is resolved to live and die." Thus write Baltimore and his guardian to the assembly, which met on May 29, 1717, and they ask that advice be given them "free and without influence."

A promise is made not to advance any person to any preferment for which he is not qualified by law.<sup>1</sup> This, of course, would take away Carroll's commission. Such was the result of the representations of Hart and the assembly, and it caused Carroll, who insisted that Roman Catholics had the right to hold office, to raise contributions and send emissaries to England to try at the least to secure the removal of Hart.

The address from England was read by Hart to the assembly at its opening. He followed it with an address, stating that he was ignorant of the motives of the house in passing the gauge bill and had found out what the motives were through the revelations of one of their officers in Great Britain.<sup>2</sup> He was not in the upper house when the bill passed there, as it was the time of his sickness, and now he urges the assembly to modify the bill to suit the proprietary.<sup>3</sup> The proprietary, as hereditary governor of Maryland, has by charter a right to the revenue, and he provides generously for Hart. The new gauge bill was drawn up and passed with the change Baltimore requested.<sup>4</sup>

The session was short and harmonious. Hart prorogued it on June 7, after it had lasted a week and a half. Fifteen chapters were added to the statute book, five of which were local or private. The address from Baltimore and Guilford recommended them to lay aside all feuds and animosities, and they seem to have done so. If it had not been for the difficulty with the Romanists nothing would have prevented the province from increasing and flourishing under the family of Baltimore.

The assembly was very loyal to the House of Hanover<sup>5</sup> and grateful to Hart. They speak of his "tenderness of our

<sup>1</sup> Lower house acknowledges Baltimore's justice in this (May 31) and thanks Hart. Of course this caused a withdrawal of Hart's resignation (Hart's speech, April 5, 1720). Baltimore's letter was dated October 10, 1716.

<sup>2</sup> He is evidently hurt at this. The delegates apologize (May 31, 1717) vide April 5, 1720.

<sup>3</sup> June 5, 1717. Hart submitted Baltimore's draft of gauge bill to council.

<sup>4</sup> The delegates positively refuse to make any other change. (U. H. J., June 7.)

<sup>5</sup> L. H. J., May 31, 1717, Hart thanks them and hopes for "many haleyon days. (U. H. J., June 1, 1717.)

privileges," and tell him the "largest opportunities we have had of demonstrating the esteem we have for your excellency have fallen so far short of amounting to a compliment that we are forced to acknowledge we have failed in doing justice to your merit. \* \* \* Though we are limited in some other respects, we are not so in affection." The assembly's chief cause for which to thank Baltimore is his graciousness in retaining Hart as governor, "of whose loyalty, fidelity, honor, and justice we have had so ample an experience." I know of no colonial governor who received higher praise, and certainly none in Maryland, save Eden, who was ever so well beloved.<sup>1</sup> Thus the assembly sums up his administration for its first three years, "amidst the various shocks he has met with, we may with boldness affirm, he has with a resolute constancy endeavored to promote your lordship's truest interest here by defending the honor of your lordship's government and the rights and privileges of the people under it with impartiality, by whose exhortation and general example we shall never be wanting to show a true Christian principle of charity." The only other thing of which the assembly makes much in its address to Baltimore<sup>2</sup> is its thanks that "he is a Protestant, and that by his recent action he has removed the grounds and motives of jealousies and made room for the truly charitable and Christian spirit of the Church of England to show how indulgent she is to the professors of the Romish religion, although the same time she knows them to be her irreconcilable enemies."<sup>3</sup> The future showed that the grounds and motives of jealousies were as yet far from being removed, but for the present all seems peaceful. This being so, Hart turns his attention to education. He has ever had this in mind, and is Nicholson's worthy successor in zeal for schools. Just at this time, too, the governors of the free schools have a petition prepared. Col. Thomas Smithson, of Talbot County, with ideas kindred to him of the same name, who has so benefited the growth of science, left a bequest of about £200 to the free schools. There was some danger that debts of the estate might diminish or wipe out the legacy, and

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<sup>1</sup> Address to Baltimore, June 7, 1715.

<sup>2</sup> Address to King very loyal, June 7, 1717.

<sup>3</sup> They urge Baltimore not to listen to Romanists, who are not his true friends. There is obviously still a little doubt as to his position.

the governors<sup>1</sup> wish to be assured against this. They represent public education as in sorry plight. The funds scarce amount to £20 per annum, and were it not for the subscriptions of sundry charitable people the school at Annapolis could not be carried on. It is hopeless to think of opening such a school in each county "for the instructing their youth in good literature and manners." The youths' application and improvement are undoubted, had they the means provided to assist their studies. Hart took up this matter and made especial allusion to the needs of the schools in his opening address. He told the assembly that the province was now in a happy condition and the means were in their hands. Therefore, it was their duty to advance the honor and interest of their country for the particular good of their children, who, were they sensible of the irretrievable loss they would sustain in the want of a liberal education in their youth, would join their tears to his entreaties. The assembly thank him for his zeal for the advancement of learning and apologize for the neglect thereof in Maryland; but attempt to excuse it from the discouragement they have experienced in having moneys raised in the province applied to the maintenance of an institution (William and Mary College) outside of it, "by which never any one inhabitant of this have reaped the least advantage."<sup>2</sup>

This tax they are persuaded arose from the Virginians' misrepresentations, and they ask Hart to help them in trying to have its proceeds transferred to Maryland schools. In the meantime they promise to do all they can, which will not be too burdensome to the public, to support the present school, and ask for suggestions as to how this may be done.

In the address to Baltimore the assembly again refers to educational matters, complain of the "great want of good literature within this province, whereby many good geniuses are of little use that might otherwise be ornaments to the country and serviceable to your lordship's interest." They ask Baltimore to help them to have the proceeds of the tax transferred to Maryland schools, instead of being applied "to a free school in Virginia, which by its remoteness from this province" is "wholly useless to any of its inhabitants."

<sup>1</sup> June 7, 1717, U. H. J., a further petition is that in intestate estates when creditors seize them the remainder may be turned over to the free schools.

<sup>2</sup> U. H. J., May 31, 1717.

Two years later,<sup>1</sup> Hart again called to the attention of the assembly that their abilities are not equal to their desires, and suggests that they petition the King for the tobacco duty which goes to William and Mary. The upper house<sup>2</sup> complain bitterly of the failure of Maryland to receive any benefit from that institution. The delegates join in this complaint and add that most of the duty comes from Maryland tobacco.<sup>3</sup> They agree to address the King thereupon, but apparently changed their minds and addressed the proprietary instead.<sup>4</sup> They tell him of their "narrow circumstances," and that "abundance of youth now growing up are unhappily destitute of those common improvements which nature hath made them very capable of, for the rendering them better Christians, better subjects to His Majesty, and better qualified persons for the just discharge of the several trusts to which your lordship \* \* \* may have occasion to appoint them, as well in the offices of State as in the distribution of justice and all other the exigencies of life." They admit with truly aristocratic scorn that the "condition of most of the people here has little claim to a truly generous and liberal education," but feel that there are enough children deserving such education to demand for Maryland a share in the royal bounty. Those who "can pay the charge there choose rather to educate their children in Great Britain, and the middling sort of people, who only stand in need for their children of such pious and charitable foundation, reap no benefit" from the "magnificent college" in Virginia.<sup>5</sup> This petition met with no very favorable response, and, as the people were as yet unwilling to raise anything by an additional tax, nothing was done until the administration of Hart's successor.

The question of ordinary licenses<sup>6</sup> engaged much of the attention of this session of the assembly. Lord Baltimore sent instructions to Hart claiming the right to these and asking that a bill be passed making these fines certain, "so that the consent of the people and not our prerogative" may settle them. The lower house responded that previous assemblies have said ordinary licenses do not belong to the secretary's office. Since Baltimore seemed to claim them by his prerogative "we are unwilling to intermeddle therewith," though they

<sup>1</sup> U. H. J., May 14, 1719.

<sup>2</sup> U. H. J., May 15, 1719.

<sup>3</sup> U. H. J., May 19, 1719.

<sup>4</sup> U. H. J., June 4, 1719.

<sup>5</sup> Vide U. H. J., April 21, 1720.

<sup>6</sup> Act of 1717, ch. 1.

asked Baltimore to give the proceeds to free schools.<sup>1</sup> The upper house, taking the proprietary's side as usual, said Baltimore has already given these fines to the secretaries,<sup>2</sup> and it would be inconsistent with Baltimore's honor that the assembly should enter upon a matter which he had settled. Further, the secretaries have been active in the happy settlement of the present establishment. Baltimore's command in the matter must be regarded as absolute. The lower house drew up a bill in the matter, to which Hart refused to consent,<sup>3</sup> as it gave the licenses to Baltimore as a compliment and not as a right. A verbal change was made and the act was finally passed. In the address to Baltimore reference is made to the matter and to the previous refusal of assemblies to admit that these licenses could be levied without consent of the people. Therefore, this assembly would think itself "justly liable to the censures of those we represent if we should now give up to your lordship, as a matter of right, what our predecessors have so much contended for and even refused to give up to the Crown." Baltimore thought it wise not to strain the point and accepted the act, though the acknowledgment of his right was not expressed.<sup>4</sup>

Baltimore gained another point at this session. On June 3 the lower house resolved to bring in a gauge bill, as proposed by Baltimore, and this resolve was carried out.<sup>5</sup> A third request of Baltimore, that the recent act for the security of the peace be reenacted so as to disclaim any reference to private affairs, was rejected as needless by the lower house.

The Irish servant bill was reenacted, however, at Baltimore's suggestion, with such amendment as to impose no restriction on the immigration of Protestants. The duty was lowered and the proceeds given to the schools.<sup>6</sup>

Another act made the negro code of the province more stringent. It seems to have been customary for each session of the assembly to take up and act upon the report of the committee of aggrievances made on the last day of the previous session. The report of 1716 complained that negroes

<sup>1</sup> L. H. J., June 3, 1717.

<sup>2</sup> Thomas Beake and Charles Lowe.

<sup>3</sup> U. H. J., June 6, 1717.

<sup>4</sup> L. H. J., June 7, 1717. Baltimore asked that it be made permanent. (L. H. J. April 24, 1718.)

<sup>5</sup> Act of 1717, ch. 7.

<sup>6</sup> L. H. J., June 6, 1717; U. H. J., June 1; act of 1717, ch. 10; act of 1717, ch. 13.

were permitted to give evidence in court. This privilege is now only to be exercised in trials of other negroes or Indians. A second grievance was that no penalty was laid on a negro marrying a white person, while the latter is punished. This, too, is now remedied, and it is also provided that slaves may be tried before a single magistrate for misdemeanors for which white men were brought before the county court. To prevent the owner from loss when slaves were condemned to death for crime, it is now enacted that the court should value the slave and the public pay three-fourths of such value to the owner.

The remaining grievance of 1716, that there was not sufficient stringency in the marriage law, was also remedied,<sup>1</sup> and due provision made for marriage according to the forms of the Church of England in the parish where the woman is resident.

A supplementary fee bill, passed this session, fixed the naval officers' fees and provided that officers must henceforth write out their accounts of fees in full.<sup>2</sup>

Baltimore sent word that he wished an act passed punishing the counterfeiting of the great seal. No such law had been passed since the obsolete one of 1649, and this neglect was now remedied.<sup>3</sup> For the future such a criminal must forfeit all his property, receive 39 lashes, stand two hours in the pillory, and be banished forever.<sup>4</sup> The last important act of the session was caused by a complaint from the Indians of Copangus Town, in Somerset County, that the English disturb them by fishing, fowling, hunting, and setting traps for raccoons and the other vermin.<sup>5</sup> A proclamation forbidding this is issued to the sheriffs to be read at the court-house and church doors. Formerly all such differences between Indians and whites had to be brought before the governor and council. This is manifestly inconvenient, and for the future any justice of the peace may hear such causes where the value does not exceed 20 shillings<sup>6</sup> sterling.

In the year 1717 the two commissaries held their first visit-

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<sup>1</sup> Act of 1717, ch. 15. Act not to refer to marriages of persons of other faiths. The clergy complained of this law, claiming it was passed through dislike to the clergy. Hawks, p. 152.

<sup>2</sup> Act of 1717, ch. 2. The act for ascertaining the bounds of land also receives a supplement.

<sup>3</sup> Act of 1717, ch. 9.

<sup>4</sup> Lower house wished to have both his ears cut off.

<sup>5</sup> U. H. J., June 8, 1717.

<sup>6</sup> Act of 1717, ch. 14.



ations.<sup>1</sup> Wilkinson, the prudent and judicious Eastern Shore man, brought together seven clergymen, delivered a sensible charge, and reported that the meeting was successful. The Eastern Shore clergy addressed the Bishop of London a long letter, thanking him for Mr. Wilkinson's appointment and complaining that a threatened division of parishes would deprive the clergy of support and drive them from the province. Hawks thinks there was more or less of a plan to starve out the clergy, and though this is improbable it must be confessed that many of the clergy did all in their power to make themselves obnoxious to the people of Maryland. In this letter, referred to above, they regret that the jurisdiction of the bishop through the commissaries is impatiently regarded by the gentry, and ask that the governor be instructed to allow no law to pass, relative to ecclesiastical matters, without causing the commissaries or some of the clergy to attend and granting them a hearing. The conclusion of the letter shows how great was the unpopularity of the clergy: "It is a sad truth that we must declare that we have not one friend in the province, except our governor, to make our application to; nor any access to, nor place, nor employ in the government, nor friend in the world that we know of, but your lordship, to stand by us."

Rev. Mr. Henderson, an abler and much more pugnacious man than Mr. Wilkinson, had a far less peaceful time in his visitation.<sup>2</sup> He gathered twelve clergymen and church wardens from thirteen parishes at Annapolis, and propounded to the latter, under oath, a series of queries as to the condition of their parishes. The clergy were then called on to produce their letters of orders and licenses from the Bishop of London. At this point even Dr. Hawks admits that Henderson "indiscreetly asserted his official importance." On the production of his letters by Rev. Henry Hall, of St. James, Herring Run Parish, Mr. Henderson put them in his bag to examine them at his leisure.<sup>3</sup> Mr. Hall, who held such a station among the clergy that he had been the first person proposed for the place Henderson held, immediately resented this and demanded their return. Henderson unwisely refused to do this, and Hall caused a warrant to be issued for their

<sup>1</sup> Hawks' *Eccles. Contribs.*, II, 152.

<sup>2</sup> Hawks, pp. 154 ff.

<sup>3</sup> Gambrell's *Church Life in Colonial Maryland*, p. 85.

recovery. The matter was at once carried by the commissary before the Bishop of London, whom Henderson thought was insulted in his person. The bishop sustained Hall, but ill-feeling had been engendered which did not soon subside. The governor bore testimony to the bishop of Hall's great worth, and most of the clergy sided with him.

Hart had formerly been a warm friend of Henderson<sup>1</sup> and, as he still continued friendly with Wilkinson, a coldness and suspicion grew up between them. Henderson's course strengthened the already existing prejudice against the exercise of the commissaries' powers. It is not surprising to find that Henderson now thought because Hart will not support him, he is not sincere in his advocacy of Protestantism and of the lord proprietary, but Dr. Hawks, in accepting Henderson's view of Hart's character, attributes an almost impossible Machiavelianism to the governor.

During 1717 another difficulty arises in Hart's path.<sup>2</sup> MacNamara, the testy attorney, was continually becoming more insolent. He called the council "the Spanish inquisition." He illegally got out a writ of replevin on a sloop and lading seized by the collector of the Potomac district. When Hart, obeying his instructions to help the collectors, granted a supersedeas, MacNamara in the most insolent manner endeavored to obstruct him, saying he wished he could see the man that dared grant such a writ. Further, he deceitfully took certain attorneys' fees from another naval officer.

Finally in the chancery court, on October 10, 1717, while Hart was presiding as chancellor, MacNamara said to the governor, "You have called me rogue and rascal." Hart denied this, but MacNamara insisted, "You did, to the best of my remembrance." The obstreperous attorney frequently had acted improperly to the court, with threatening words and indecent and irreverent behavior, and frequently, but to no purpose, had he been admonished. Hart will endure no more. "This is contempt, and lessens his lordship's authority and the grandeur of this court by taxing the governor with falsity. As keeper of the great seal, I suspend you from practice, save for pending cases of Crown revenue, till due sub-

<sup>1</sup> Hawks, p. 159.

<sup>2</sup> Hart's speech to upper house, April 25, 1718. Indictments were brought against him by the grand jury for some of these things. (U. H. J., May 6, 1718.)

mission is made by you." "I appeal to the King in council," retorts MacNamara. "The appeal is granted, but should be made to the lord proprietary," answers the governor. "Then I appeal to him, and ask that the particular facts or instances of misbehavior alleged against me be set out." On June 22 and July 12 MacNamara had already written to Baltimore and Guilford, complaining he had been impeded in his practice by Hart. In answer they write to Hart not to continue this. There had been all sorts of trouble when Charles Carroll was being examined by Hart on behalf of the commissioners for forfeited estates. MacNamara, "officiously and without call," interrupted and told Carroll not to answer. At other times MacNamara had used "ill language to another practitioner in the face of the court" "and indecent and contumacious tones and gestures" to the court itself. When Hart taxed him with this and rebuked him MacNamara answered "I deny it," thus charging the governor with uttering falsities.<sup>1</sup> At some time or other, in the chancery court, MacNamara publicly told Hart "I had tried to have you removed from your position." As the winter came on matters did not improve. On February 24, 1717-18, in chancery court, in presence of two witnesses, MacNamara said to Hart, "I am sorry that ever I said anything which might offend the governor, but I will not beg the commissioners' pardon." Yet this speech he now denies, and thus again indirectly gives Hart the lie. When Hart suspended him from practice MacNamara said, "You are both judge and party in the case," and circulated the false report that Hart had unmercifully beaten him.

When the assembly met on April 22, 1718, Hart<sup>2</sup> gives the upper house a full account of his difficulties with MacNamara, and refers to them in his address to both houses. He asked them whether MacNamara's insolence should be exempt from punishment, seeing he has given this Government disturbance for almost as many years as he has been in it. MacNamara heard of this and at once went to the clerk of the lower house and demanded a copy of Hart's speech. When the clerk did not comply MacNamara threatened to extort it, and spoke dis-

<sup>1</sup> L. H. J., May 7, 1718.

<sup>2</sup> In the fall of 1717 Hart issued proclamation forbidding illicit trade, but writes to England that he knows of no such trade in Maryland.

respectfully of the house. For this he was at once summoned and stated he remembers using no such expressions, and is sorry if he has done so, attributing it to the effect of the wine he had been drinking.<sup>1</sup> He was excused, but the lower house showed its position in the matter clearly on April 28 in their answer to Hart's address. They speak of MacNamara's "plotting, uneasy, and revengeful temper," of his "proud and turbulent behavior," and thoroughly approve of Hart's suspension of him from practice, as necessary to preserve proper decorum. This is strong language, especially when we remember MacNamara was formerly clerk of the house. They thank Hart for his promise to support all magistrates, and promise to do all they can to support him.

Apparently, in two letters,<sup>2</sup> Baltimore and Guilford had expressed approval of Hart's action in the matter, and these letters meet with the warmest commendation on the part of the assembly.<sup>3</sup> The lower house thinks this conduct of the proprietary will discourage such as for the future shall fly in the face of Government, and that MacNamara's troubles came "purely through his own haughty ambitious temper and ill conduct."

Further complaints against the turbulent MacNamara pour in. Bladen,<sup>4</sup> the attorney-general, says he overcharged fees as naval officer of the *Patuwent*.<sup>5</sup> The justices of the provincial court<sup>6</sup> lay complaint that he is a person of "turbulent, refractory, haughty, and abusive temper," who had been already once suspended from practice. The whole course of his life is so turbulent and disorderly that he hath very rarely been clear of some criminal prosecution in the provincial court for many years, though his artful, audacious management of the subtle and tricking part of the law hath often freed him. "We will no longer hold our places," they say, "if so turbulent and insolent a person be allowed to practice."

Baltimore, in a letter to MacNamara, seemingly advised him to submit to Hart, and added, "we are willing the people of our province should reap the benefit of that capacity and

<sup>1</sup> L. H. J., April 24, 1718.

<sup>2</sup> Dated November 16, 1717, and February 4, 1717.

<sup>3</sup> U. H. J., April 28, May 10, 1718; L. H. J., April 29, 30.

<sup>4</sup> Captain Pulsifer also charges this (U. H. J., May 7, 1718).

<sup>5</sup> L. H. J., May 2, 1718.

<sup>6</sup> William Holland, Samuel Young, Thomas Addison, Richard Tilghman (U. H. J., May 5, 1718).

abilities your enemies allow you have to serve your clients." But he would not bend. The upper house sent for him on May 5, but received no submission from him.<sup>1</sup> Something must be done. The upper house suggests the passage of a bill preventing him from the practice of law. The delegates at once accept the suggestion and the bill is passed. With it are incorporated certain provisions for better supporting the magistrates in the administration of justice.<sup>2</sup>

The clergy call for more attention of the assembly at this session than at any other in Hart's administration. At the same time that the legislature met, the clergy were convened in Annapolis at Hart's summons, that the good government of the church may promote and propagate true religion and virtue.<sup>3</sup> When they were met in the library, Hart addressed them, twenty in number, and called attention to the fact that the commissaries had found difficulty in executing their commissions, through the constitution of the province and the natural situation of the country, filled with great rivers and creeks. He asks them to do what is fitting and to present any grievances to the assembly. The "Jesuits and other popish emissaries are prevailing by their insinuating arts upon the weak and ignorant," and are "vigilant in gaining proselytes and seducing the unwary." He advises the commissaries to "use methods of mildness and gentleness and the clergy to show by their unity and brotherly love they are the disciples of the prince of peace and concord."

The clergy return a grateful answer,<sup>4</sup> regretfully acknowledging that "popery" is increasing. They speak of their "deep sense" of Hart's goodness and favor to them and his zealous inclination for the propagation of our most holy religion "and of their deep feeling of gratitude" to him. Hart replies, saying, more definitely than before,<sup>5</sup> that the clergy should speak plainly concerning the necessity of some legislative sanction to the exercise of the bishop's jurisdiction in Maryland. In this action Dr. Hawks thinks Hart was hypocritical and tried to fortify himself in popular favor by casting odium on the clergy. He adduces no proof of this, however, and there was no possible reason for such a line of

<sup>1</sup> U. H. J., May 7, 1718.

<sup>3</sup> Hart's message to lower house, April 29, 1718.

<sup>2</sup> Act of 1718, ch. 16.

<sup>4</sup> Hawks 11, p. 161.

<sup>5</sup> So Hawks says. I have not seen the reply.

conduct. Hawks has undoubtedly attached too much importance to the disappointed vaporings of Henderson. The latter is said to have opposed having the convocation take any action, fearing a failure. Gambrell, however, well says that Henderson was one cause of the failure,<sup>1</sup> for the people did not wish to place ecclesiastical jurisdiction in the hands of a man whose actions had been such as those of Henderson toward Hall. It is noticeable that the clergy insisted that Henderson must withdraw all charges against Hall, and that several of them contributed to the failure of the attempt to establish ecclesiastical jurisdiction by telling the delegates that "the act was tyrannical and would be the means of driving people from the church to the Roman Catholics and the Quakers."

The clergy submitted<sup>2</sup> to the assembly the following requests: (1) That the jurisdiction and authority of the bishop of London be recognized by the assembly; (2) that the province pay the salary of a writer to record the commissary's proceedings; (3) that the sheriffs may serve citations for the clergy; (4) that church wardens who attend the commissary's visitations, with difficulty crossing creeks and rivers, be allowed their traveling expenses from the parochial charges, and (5) that the commissaries and other clergy may be allowed to cross ferries free at all times. Hart sent this paper to the assembly. The upper house seems to have been willing to accept the propositions. The lower house,<sup>3</sup> however, felt that the ecclesiastical jurisdiction might overlap the law courts and be grievous to the people, that consideration of the matter would take time, and that at present it was impracticable to put ecclesiastical laws in force.<sup>4</sup> It was the only attempt to carry the idea of a state church to its logical conclusion, and it fortunately failed at the very outset.

The religious question was a most important one. Hart had hoped<sup>5</sup> to have the rest of his administration peaceful, that he might wholly work for the welfare of the province, but found that "the restless and turbulent spirit of the Papist

<sup>1</sup> Church Life in Colonial Maryland, p. 86.

<sup>2</sup> U. H. J., April 30, 1718. The bishop had written to the commissaries, leaving such application to their discretion. Wilkinson read his letter, against Henderson's advice, who said the opponent would claim the bishop was indifferent to the plan. (Hawks 11, 163.)

<sup>3</sup> Hawks 11, 164, says one-third lower house were dissenters.

<sup>4</sup> U. H. J., May 3, 1718.

<sup>5</sup> Hart's speech, April 22, 1718, to assembly.

party still persecuted and defamed him," because he opposed their claim of an equal share in the administration of government and required them to qualify before they could execute office. MacNamara joined with Carroll in complaining to the proprietary against Hart, and they tried to make people believe there was no law nor justice under Hart's government. So Hart tells the assembly. Carroll,<sup>1</sup> "that profest Papist and first fomenter of the late disturbances, having acquired vast estates by the offices he formerly employed and his practice of law," was "not contented to enjoy this affluence of fortune with more indulgence than he could expect anywhere else," but must "add ambition of rule to his former felicity." It is obvious to all, "save those willfully blind, what steps the Romanists take to introduce themselves into the province." "Indefatigable in their designs," instead of sitting down after their first repulse, "contented and easy under the protection of the government," they calumniate Hart in their disappointed rage. The emissaries sent by them to London were very active against Hart and exclaimed in bitter terms of the persecutions of the Roman Catholics in Maryland and "how cruel manner they were treated in, and even debarred the liberty of a free commerce." They unfairly got the opinions of three eminent lawyers against the act for suspending the persecution of Papist priests, but Hart told Baltimore the truth. An answer from Baltimore<sup>2</sup> sustaining Hart has been received: We "are so far from imagining that any countenance should be given them in that pernicious practice of perverting people to the Romish superstition that we very well approve of the laws made to prevent it." "In the name of God, gentlemen of the assembly," cries out Hart, "inquire into these things and make an impartial representation of the truth."

The addresses of the two houses<sup>3</sup> in answer to this are filled with expressions of devotion to Hart. The council speaks of his "prudent conduct in the late conjunction of affairs, whereby the dark intrigues and secret machinations of popish faction are in a great measure defeated," and states that they feel

<sup>1</sup> Carroll had refused to issue patents for land, but when paid one-half the fees of the seals and with the test "our trusty and well-beloved Charles Carroll, esquire, his lordship's chief agent of our land offices." Hart said this was derogatory to the office of keeper of the great seal, and refused to permit it. The lower house supported Hart and said the people entitled may sue Carroll for their patents. (L. H. J., May 5, 1718).

<sup>2</sup> Baltimore's letter of November 16, 1717.

<sup>3</sup> U. H. J., April 26, 1718.

scene against the "further attempts of that restless and ambitious party." They warn them that they will lose their present quiet, "if they continue." Hart's enemies are only the friends of a popish establishment, inflamed by disappointment and centering their malice on Hart. They spread rumors that Baltimore was favorable to them. With rather remarkable boldness, the council express the hope that the proprietary will look upon that body as best qualified to give advice and tell of the true state of the province and will not lean on representations from other quarters. They significantly add: The "restless spirits of a popish enterprising faction" might endanger the proprietary's position if they were allowed a voice.

The lower house<sup>1</sup> praises Hart's "steady and prudent conduct of affairs" and his "unbiased methods" of administration. They feel that the Roman Catholics have no right to further indulgence, and that it might be well to repeal the Maryland laws against Popery, that the sterner English ones might come into force. "Papists under a Protestant government," say the delegates, "if listened to, will not be without complaint, more than fire without warmth or water without moisture." In all Hart's administration the strictest observation can find only justice and "universal satisfaction to all His Majesty's faithful Protestant subjects."

An address of both houses to Hart is adopted and an appropriation of £200 made to recompense him for the expense he has been put to in resisting the attacks of the Romanists.<sup>2</sup> The milder Maryland statutes are repealed<sup>3</sup> and the Roman Catholics come under the harsher English law. Another act,<sup>4</sup> the first of the session, by which the electoral franchise is taken from all Roman Catholics, is hurriedly passed, that a special election for delegates at Annapolis may be held under it. In approving it, Hart says:

I take it to be highly unreasonable the Papists and their adherents, who, whenever it is in their power, show such a notable disaffection to our laws, should be permitted to vote for the election of members of the lower house.

These oppressive laws were in force throughout the whole

<sup>1</sup> L. H. J., April 28, 1718.

<sup>2</sup> L. H. J., May 9, 10.

<sup>3</sup> Act of 1718, ch. 4.

<sup>4</sup> Act of 1718, ch. 1; L. H. J., April 29, 30, 1718. It was urged that without this law the Roman Catholics might occasion great disturbance by electing themselves or their adherents as delegates. (L. H. J., April 26, 1718.)



provincial period of Maryland's history. Their intolerance has often been condemned.<sup>1</sup> Their passage has been explained by no previous historian. Though we must admit there was much to extenuate the conduct of the assembly in passing these laws, which simply made the condition of Roman Catholics in Maryland similar to that of those in England, we agree with McMahon that "the Catholics were taxed to support a religion and government to which they were emphatically strangers."<sup>2</sup>

Just before adjournment the assembly<sup>3</sup> adopted an address to the proprietary. They thank him for his kindness and express gladness that he is so good a Protestant, though the "assiduous endeavors of a restless faction" tried to prove the contrary. They tell him that the Roman Catholics are members of that party "which kicks against government," and explain why the new measures against them were adopted. "The penalties of the English law are greater than we wish to use, if these gentlemen will demean themselves quietly and peaceably;" and this was true, for the Roman Catholics rarely, if ever, incurred the full rigor of the law, though it remained on the statute book.

At this session comes into notice a third opponent of Hart, Maurice Birchfield, collector of the customs. The committee on grievances complain that he summoned to the chancery court, without demand or notice, in "immethodical manner," many who had small dealings with London merchants and some who had never dealt with them.<sup>4</sup> This he did from the avaricious and litigious temper of MacNamara, his attorney, "desiring to increase the fees." The assembly complained of it in the address to Baltimore.<sup>5</sup>

As usual, we find the report of the last session's grievance committee acted on at this time. There were three points in this report. The first was that executors and administrators were not obliged to deliver the estate to the heirs till accounts are fully stated.<sup>6</sup> This might not be done in seven years. The committee suggested that the heirs should receive a proportionate part of what appears to be due, on the rendering

<sup>1</sup> E. g., by Scharf, 1, 370, 388.

<sup>2</sup> History of Maryland, 281.

<sup>3</sup> On Hart's advice. (U. H. J., May 9, 1718.) Baltimore says he'll lay case before the commissioners of the customs. (U. H. J., May 14, 1718.)

<sup>4</sup> L. H. J., June 7, 1717.

<sup>5</sup> L. H. J., May 10, 1718.

<sup>6</sup> L. H. J., May 5, 10, 1718.

of the first account, and (if full age) give security to refund a proportionate part of any claims proven against the estate.<sup>1</sup> This recommendation was favorably received at the next session, and a law passed authorizing heirs and legatees, twelve months after the death of the one from whom they inherit, to demand their shares of the estate from the executors or administrators.<sup>2</sup>

The third grievance<sup>3</sup> was that public business in the several courts was delayed often for six or seven years, thus discouraging suitors and often forcing them to agree their causes to their great disadvantage. The committee suggest the passage of an act obliging county courts to determine cases in six months' time, the provincial court in twelve months, and the court of chancery and the governor and council in eighteen months.<sup>4</sup> The suggestion was accepted, though the periods of time were changed, and an act was passed to "limit the continuance of actions," and to ascertain "the manner of taking the evidence of seafaring men," and to grant "appeals from the chancery court to the governor and council."<sup>5</sup>

The revenue question, of course, came up, this time with reference to the 8 per cent deduction from the 18d. per hogshead. Baltimore, in his letter of November 16, 1717, said that he expects the restoration of this. The lower house<sup>6</sup> answers that the money was raised conditionally for Baltimore's use and not for defraying the public charge, and when he accepted it the assembly wholly resigned their interest therein. But if Baltimore had refused, the money would have been applied to the use of the public. Naval officers then would have had the right by law to deduct their salary of

<sup>1</sup> Also that no injunction against orphans remain undetermined over two courts.

<sup>2</sup> Act of 1718, ch. 5.

<sup>3</sup> The only new grievances noted at this session are that, on rehearing a case in chancery, the same judges are present as passed the decree, and that feigned recoveries of lands are practiced. (L. H. J., May 6, 8, 1718.)

<sup>4</sup> L. H. J., April 29, 1718, May 5, 7; act of 1718, ch. 10.

<sup>5</sup> There were nineteen acts passed this session. Eleven of these were strictly private, and another (ch. 3) permitted John Steele to hold office, though he had not been three years in the province. (U. H. J., May 6, 1718.) The bounds of land act was amended and reenacted. (Ch. 18.) It may be added that the assembly was generally careful not to pass a private act unless the parties had notice (L. H. J., May 1, 1718), and that they rarely, if ever, interposed if there was a common-law remedy. (Vide U. H. J., May 3, 1718.) April 2, (L. H. J.), Monason, King of Asotage, and his Indians petition for something (L. H. J., May 1), but apparently without result. One private act, that for the relief of certain languishing prisoners, debtors, raised some discussion as to whether the sheriff or gaolers should have any fees for them. (L. H. J., May 7, 8, 1718.) The treasurer was ordered to procure £20 worth of paper, parchment, and ink powder for public use.

<sup>6</sup> Vide L. H. J., June 8, 1717.

8 per cent against the public. Baltimore took it under the like incumbrance. The dispute, if any, is not between Baltimore and the assembly, but between Baltimore and the officers. This was an adroit shifting of ground.<sup>1</sup> The upper house, however, suggests that it would be well to give the 8 per cent to Baltimore, to make him look favorably upon the assembly proceedings, and this is done by majority vote of the delegates. They give up none of their claim to the right, but grant the money as a favor to Baltimore, for his goodness in admitting good laws.

Hart's health did not improve, and in the winter of 1718-19 he petitioned Baltimore that he might be absent twelve months for his health.<sup>2</sup> Leave was granted by the Crown<sup>3</sup> and by Baltimore, but Hart did not take advantage of it. Probably the troubles with MacNamara caused him to remain. This troublesome man appealed to England, and on his representation of the matter Lord Baltimore vetoed the act disbarring him as an *ex post facto* one.<sup>4</sup> He told Baltimore that the assembly which made the law<sup>5</sup> did not summon him before it, but acted with such secrecy that he only heard of it by accident, and that his petition to have opportunity of justifying and defending himself was denied. On this partial and false statement Baltimore took the advice of three of the most distinguished lawyers of the day.<sup>6</sup> They all advise him to veto the law, one of their opinions going so far as to say he "never heard that the legislature of any civilized country ever passed an act so arbitrary and unjust as this seems to be." Without trying to get a statement of facts from the legislature, Baltimore vetoes the bill. He does, indeed, suggest that he would approve a general act for better supporting the magistrates.

Upon receiving this news Hart at once calls the assembly together, although at an inconvenient time of the year.<sup>7</sup> In the beginning his speech at the opening of the assembly on May 14, Hart refers to the veto, and tells the legislators that if MacNamara, or any other, be suffered to insult the courts

<sup>1</sup> U. H. J., May 10, 1719.

<sup>2</sup> Vide L. H. J., April 15, 1720.

<sup>3</sup> Hart says MacNamara did not appeal to the upper house nor to him before the passage of the act. (U. H. J., May 14, 1719.)

<sup>4</sup> U. H. J., May 15, 1719, John Hungerford, Thomas Pengelly, Edward Northey. Northey said if MacNamara was guilty he should make submission to the courts.

<sup>7</sup> Robert Ungle was chosen speaker by a majority vote, and Michael Jenifer clerk of the delegates. This was a new assembly.

<sup>3</sup> On March 19, 1718-19.

<sup>4</sup> U. H. J., May 14, 1719

with impunity, as he has so often done, it will destroy the very essence of all authority and power, principally instituted to pull down and punish the haughty and bad and support and cherish the humble and good. He advises the legislature to repass the law so amended as to meet Baltimore's objections.

The second point in his speech refers to the other great quarrel, that with the Roman Catholics. Baltimore and Guilford have written that they are displeased at the indiscreet and malicious proceedings of this party against Hart, who feels bound by public utterance to disabuse all of the notorious untruth that he has persecuted them. All he has done has been to endeavor to prevent "their employing of offices or having any influence, either publicly or privately, on the administration of this government."<sup>1</sup> This has been his indispensable duty as governor, and he challenges any to show when he has gone beyond this and persecuted any for conscience sake. Roman Catholics have never yet been disturbed under the protection of this Protestant government, but must not intermeddle with the ministerial part of the government nor proselyte Protestants. They have nothing better to hope from Lord Baltimore when he comes of age.<sup>2</sup>

Turning to measures of more local character, Hart recommends that the return of juries be better provided for by law, since the lives and fortunes of the people depend on the integrity of juries. In England no commoner is too good to be a jurymen; so should it be in Maryland.

Hart urges upon the assembly the importance of good roads. The thing speaks for itself, but there is not a sufficient penalty allowed by law to be inflicted by road overseers on those who disobey them, and only the meanest of the people are appointed overseers. No man should be too good to serve his country. Especially provision should be made for the great road through the heart of the province, which is the usual and shortest passage for travelers to and from the other colonies.<sup>3</sup>

<sup>1</sup> He says not all the Roman Catholics have been against him.

<sup>2</sup> The upper house (May 18) says the Romanists have built on the nearness in blood of Baltimore to some gentlemen of Romish communion.

<sup>3</sup> A bridge over the Patuxent at Queen Anne Town and a road over the Kent Marshes are recommended.

Five years earlier, October 5, 1714, Hart threw an interesting side light on means of transportation in Maryland, in suggesting that a provision for certain convenient places

The act offering a bounty on squirrels should be repealed, as the war made on these little animals cost the country in one year £7,000 sterling.<sup>1</sup> The last suggestion in the speech is one concerning the returns of taxables. All who receive protection of the laws should bear an equal proportion of the charge, and it does not seem to Hart that the increase in the number of taxables corresponds with the happy increase of youth and the vast importation of Europeans and negroes. His final sentence is one of the most remarkable to be found in the annals of colonial governments:

As you are, I thank God, a free people, so may you accept or reject what I now deliver to you, as you shall find it for the conveniency or inconveniency of your country.<sup>2</sup>

Eighteen acts were passed at this session. Of these seven were private. The act against MacNamara was passed a second time.<sup>3</sup> In the answer to Hart's speech the upper house say that they think MacNamara purposely made no application to them that he might appeal to England. This address, as all from that body to Hart, is extremely grateful and cordial in tone. The lower house is fully as loyal to Hart, and expresses much more indignation at the opinions of the lawyers, stating that these opinions are worthless, because their authors did not know the facts. MacNamara had not been heard in person before the lower house of assembly because, though they believed he had knowledge of their first vote, he made no application to them until the bill had passed beyond their hands into those of the upper house.<sup>4</sup> Furthermore, the court in which MacNamara pleaded had condemned him. To admit him to a hearing would be to question the veracity of

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of landing would lower freight charges and give ready dispatch to shipping tobacco in good condition for an early market, which is the life of the province's commerce. Also, sailors would no more have to "row" the hogsheads for many miles, which is not "only destructive to navigation, but is a slavish labor unworthy the native liberties of Englishmen." The masters of ships made an unsuccessful petition to the same effect at this session. (L. H. J., May 21, 1719.)

<sup>1</sup> May 25, lower house refused to repeal or amend it.

<sup>2</sup> L. H. J., June 4, 1719, Evan Jones was given leave to print the laws made this session with the governor's speech, answers, and the several addresses, vide July 30, 1715, when he petitioned to write the laws.

<sup>3</sup> Act of 1719, ch. 17. The lower house committee of laws say that the act is not a bill of indictment, and therefore not void for uncertainty, and that the legislature is not tied to common rules of justice. Courts in which MacNamara practiced condemned him, and out of diffidence in their own power asked the legislature to aid them.

<sup>4</sup> He never petitioned the upper house. This, say the delegates' committee of laws, argues "sense of guilt or resolute obstinacy."

that court without cause, and would make the justices parties or defendants in a matter whereof the law made them judges and where the facts are notorious.<sup>1</sup> The very essence of authority and government are nearly concerned here. If there is yielding now, any lawyer may summon the whole country, as suitors, to Great Britain, where they can not with convenience appear to prove their allegations. The constitution is not worth supporting, if neither court nor country are capable of judging the demeanor of one attorney. MacNamara may be a barrister, but in Maryland he has only appeared as an attorney and should be punished, as any inferior court has power to act toward an attorney misbehaving before it.

The lower house<sup>2</sup> committee on laws go on to say:

If the legislature can not redress the country's grievances and remove nuisances, and they found him both, if this man must be supported in his practices, in spite of courts and country, \* \* \* especially as there is no encouragement by fees or pensions for judges, and the positions are a great burthen, every one qualified will try to avoid them, rather than tamely submit to lies and affronts, or drag themselves into tedious and chargeable contests, then we are not so happy in our constitution as we had hoped for, for what impartiality can there be in judges, where, if they oblige not resenting counsel, they are abused or affronted or become objects of his revenge?

In the address to Baltimore, adopted at this session, the assembly refers to the trouble with MacNamara, and states that to pass the disbarring act was the only way of effectually discouraging this generally troublesome person. The act for better supporting magistrates in the administration of justice is passed separately, so that if Baltimore reject the one the other may be saved. Reference is made to the frequent insults given to magistrates, and authorization is given them to fine officers.<sup>3</sup>

In regard to the troubles with the Romaniſts, the two houses support Hart most warmly. The upper house says there is no religious persecution in Maryland, "unless wholesome laws to preserve life or property be persecution of felons and murtherers, a principle of so horrid and salvage a nature

<sup>1</sup> Hart apparently alludes to MacNamara in his speech of April 5, 1720, when he refers to "one now dead, who with horrid execrations said he did not doubt to see me as fast in prison as ever he was (who had been so for murder and other crimes) and my innocent children set a begging."

<sup>2</sup> L. H. J., June 4, 1719.

<sup>3</sup> Act of 1719, ch. 4.

that every community of reasonable creatures will explode it as destructive of all civil society." The analogy is far-fetched, but there is no doubt of the house's meaning.

The lower house is astonished at the "monstrous structure raised by the partial clamors of Papists." Reference is made to the fact that the laws of Great Britain are more severe against Roman Catholics than those of Maryland. They complain against the justice and lenity of Hart's administration, only because he opposed their attempt to hold the prime offices in this province. The Romanists have endeavored to subvert the government and pervert the more unthinking of our people by alluring them to the superstition of their church. Thus Hart and the assembly have been forced to act defensively.<sup>1</sup> Long may the province continue "under the conduct of so unbiassed a ruler."

In pursuance of the recommendation as to juries, an act is passed that each jury may receive 120 pounds of tobacco for each cause and an additional per diem of 15 pounds of tobacco per juror. If any suitor give more, he is to be fined. This is evidently to prevent embracery, and also is a far less important act than the one Hart recommended. The lower house said there was no instance of the sheriffs failing to return the best and most understanding freeholders as jurors.

As to roads, the delegates say the law needs no amendment, but rather enforcement, and that the several counties should make all the roads. Road making should not be a provincial charge. The recommendation as to the return of the taxables was looked on favorably, and a more stringent law was passed which remained in force for many years. Single freemen without settled place of residence had not been returned by employers, as not being members of their families, and so have paid no tax.<sup>2</sup> For the future they must procure a house-keeper to give them in as taxables, or be committed to the sheriff's custody.<sup>3</sup> Other important acts of the session were those for the encouragement of an iron manufacture,<sup>4</sup> and for the administration of intestates' estates, providing that a strict accounting be made of the residue of each estate and that

<sup>1</sup> Reference to this matter in address to Baltimore, June 6, 1719, last day of the session.

<sup>2</sup> Act of 1719, ch. 3; U. H. J., May 30, June 1, 2, 1719.

<sup>3</sup> Act of 1719, ch. 12; U. H. J., May 29, 1719.

<sup>4</sup> Act of 1719, ch. 15.

it be not embezzled by the administrators, who were often creditors of the deceased.<sup>1</sup>

The committee on grievances<sup>2</sup> reported early in the session that when servants run away from masters in other colonies they will often lose the servants rather than pay the fees. In such case there is no provision as to the disposition of the servants. To remedy this state of things, an act is passed providing that the sheriff may sell such servants by public vendue and pay the fees out of the produce, only accounting to the owner for the residue.<sup>3</sup>

The last act of this session<sup>4</sup> was one regulating officers' fees, and Hart's action on this occasion was looked back to as a precedent in the later quarrels over fees, even down to that latest and greatest conflict when Governor Eden and the delegates struggled in a fierce contention which only ended when Maryland ceased to be a province and became an independent State. The old fee bill expired at this time and Hart suggested to the assembly that, as he had no instructions about fees and Baltimore had expressed his intention to come in person to the province, the former bill be continued<sup>5</sup> until Baltimore comes of age, on September 20, 1720. The upper house agreed to this, but the delegates said the present fees are so great an oppression to the inhabitants that they rather inclined to be without a law for that purpose till the arrival of the lord proprietary than longer to groan under such hardships.<sup>6</sup> The upper house said in reply that by awaiting Baltimore's arrival in the province they will have an opportunity to argue the reasonableness of things with him, and what will then be done will be lasting. They agree that some offices are grievously burdensome, but consider it better to continue the old act for so short a time rather than involve the country in great difficulties.

The lower house refused to agree to this. The act has expired.<sup>7</sup> Hart directs the man who affixes the great seal to

<sup>1</sup> Vide May 25, L. H. J.: If no heirs, residue to public schools. This was all that was done for education at this session. (June 2, L. H. J., act of 1719, ch. 14.)

<sup>2</sup> L. H. J., May 23, 1719. A bill against the villainies of imported servants was introduced, but did not pass. (U. H. J., June 3, 5, 1719.) Importers of convicts were ordered to give bond for their good behavior. (L. H. J., June 3, 1719.)

<sup>3</sup> Act of 1719, ch. 2.

<sup>4</sup> *Ibid.*, ch. 18.

<sup>5</sup> U. H. J., June 1, 1719.

<sup>6</sup> L. H. J., June 1, 1719; U. H. J., June 3, 1719.

<sup>7</sup> Bacon says, May 20, 1718, "If so, the province had already been a year without any fee law."



documents not to do so without the fee indicated in the old law. This is government by executive authority.

The next day the upper house<sup>1</sup> again addressed the delegates. 'Are not you too positive in resolving to deprive the country of the benefit of the former law, which did somewhat restrain the officers? Some fees are too high, but the bill you would have us pass abridges the perquisites of some officers so as not to afford sufficient support for the stations of the persons who execute them. It is an ungrateful return to Baltimore and Hart for their favors, to lessen extravagantly the revenues of their officers. Why could not we have a joint committee on the matter? Our house is as much a part of the legislature as yours, and has the interest of the country as much at heart. We wish to be just to all.' The lower house at once agrees to a conference, and the report of this committee, made on the following day, is at once adopted by both houses.<sup>2</sup> Hart agrees to pass the bill if limited to three years, or to the first session after Baltimore's arrival. This is done, and the bill thus passed was in force by continuances for some six years. The whole procedure shows the reasonableness of both parties. Hart<sup>3</sup> announced, however, that Philemon Lloyd, deputy secretary of Maryland, formally protests in the council against this bill, saying that by depriving the secretary of so large a part<sup>4</sup> of those perquisites intended by Baltimore to be a handsome support for him, it is an infraction of his rights, and will encourage all litigious spirits in molesting and harassing their innocent neighbors with vexatious suits upon slight and frivolous grounds.

Peace has been made with the Tuscaroras. The delegates thank Hart for this and for his great care in cultivating and preserving good friendship with the bordering Indians. They vote a present of £10 currency to the Tuscaroras. The great men of the Nanticokes, Panquash, and Annatoquin complain that a white man has settled on their lands at Checkacone.

<sup>1</sup> U. H. J., June 4, 1719. The lower house, May 28, asked its committee of laws to prepare a bill against the purchase of offices. The bill did not pass, owing to upper house amendments.

<sup>2</sup> U. H. J., Apr. 21, 1720. Baltimore refuses to approve this bill, June 5.

<sup>3</sup> In spite of their good will toward Hart, the assembly refuse to make one Humphries, a particular friend of Guilford and Baltimore, and recommended by them capable of holding office, before he had been three years in the province. They suspended that law once for each governor, they say, and the favor (case of Steele) had already been done for Hart.

<sup>4</sup> He estimated it as one-fourth.

The Choptanks also complain that the English have encroached upon their lands, so they are all driven into Locust Neck.<sup>1</sup> The intruders are ordered to remove, and three men are appointed to decide differences between Indians and whites on the Eastern Shore,<sup>2</sup> but, alas, nothing was done with reference to the complaint of the Nanticokes that the English bring strong drink to their towns and sell it to their great prejudice.

The relations between Hart and this assembly were so friendly that at the conclusion of this session a present of £200 currency is made to him as a partial reimbursement for the great sums of money he has spent for the provincial interest, and because he has been kind and serviceable to Maryland.

All seemed to think this was to be Hart's last assembly, but he was yet to summon another session. After nearly a year more he met with the legislature on April 5, 1720. The session lasted until the 22d, but its contribution to the statute book was a small one. Fourteen acts were passed. Of these ten were strictly private.<sup>3</sup> One continued the ordinary act for a year, a second provided for the public levy, a third continued the gauge act for a year, and the fourth concerned the governor's salary. There seems to have been a restlessness and discontent in the assembly and a trifle less of cordiality toward Hart. In opening the session Hart asks that the gauge act be continued, and refers to it as a considerable achievement of his administration.

As this is his last session, Hart reviews his course toward the Roman Catholics. The "Papists" still seem to keep on foot their pretense to hold all offices, as the Protestants do. He has been a memorable instance of the effects of popish malice, and now doubt not that they await his departure as a more favorable conjecture to put their designs into practice. He traces the course of his struggle against the claims of Carroll, "who by principle is an enemy of the Protestant constitution," and the conflict with MacNamara. If these men have acted so to the governor, what would they do to Protestants if they had the power? The Roman Catholics might have been peace-

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<sup>1</sup> U. H. J., May 18, 1719.

<sup>2</sup> April 8, 1720, Philip Thomas, of Anne Arundel County, says his servant has run away to the Tuscaroras, who are ordered to give him up.

<sup>3</sup> In explanation of the large number of private acts, on April 21, 1720, the assembly tells Baltimore that the infancy of the country does not permit such extensive administration of courts of justice, but that in some cases the assistance of the legislature may be absolutely necessary to supply defects of law.

fully happy if they had not interfered with government and perverted Protestants, as the Jesuits constantly do. They falsely pretend that Maryland was granted them as an asylum from the rigor of the penal laws of England. They can not have a better right than the charter admits them to, and, in Hart's opinion, there is so far from a provision being made therein that the government should be in their hands in any degree, that there is not even an exception made for the free exercise of their religion. The phrase "God's holy and truly Christian religion," used by Charles I, a Protestant, could only mean the religion that monarch professed. Therefore, Papists only enjoy privileges in Maryland through the connivance of the government. If they win the conflict, it may some day be fatal to the Protestant colonists, especially considering the prodigious settlements which a formidable nation of their own persuasion are extending on our borders. It is easier and safer to prevent than to cure an inveterate distemper.

Let us therefore call some of the principal Papists and examine them before the legislature as to their privileges. If they will not submit their claim to public examination, mankind will be persuaded that it will not bear the light. If they have the right, let justice be done, in the name of God. This course of procedure will prevent imposition on strangers and unguarded minds.

The lower house<sup>1</sup> is loyal to Hart and speaks of his zeal and resolution in defense of the present happy Protestant constitution. They approve of his plan and promise to attend to the gauge act. The upper house<sup>2</sup> joins in approbation of Hart's administration, which is not only approved but also applauded by the Protestants. The Jacobites and Papists are in the opposition, with possibly some few Protestants, gained through misunderstanding. Both houses agree that the Roman Catholics have all the rights which they should enjoy.

Hart at once puts his plan into execution<sup>3</sup> and summons Charles and James Carroll, Henry Darnall (senior and junior), Benjamin Hall, Clement Hill, William Fitz Redmond, Henry Wharton, Charles Diggs, Peter Atwood (a priest), Maj. Nich-

<sup>1</sup> L. II. J., April 11, 1720.

<sup>2</sup> U. II. J., April 11, 1720. Hart in his reply acknowledges his success as largely due to the assembly's "just, steady, and well-concerted counsels."

<sup>3</sup> U. II. J., April 12, 1720; vide April 12.

olas Sewall, and Richard Bennett to appear before the assembly. The summonses were sent out and the assembly waited over a week, but no answer came.<sup>1</sup> It was ascertained that the "most eminent of the Papists were in town at the time appointed to hear their pretensions,"<sup>2</sup> but did not think fit to appear. "Therefore," say the upper house, "they tacitly acknowledge that their pretensions are groundless and their exclamations most unreasonable." The lower house agrees that these proceedings were admirable "means to secure and establish to the Protestants their just rights against any future claim of right the Papists may pretend to."

It seems that Baltimore, and Guilford,<sup>3</sup> his guardian, had become more hostile to Hart. On July 4, 1719, he wrote them that on account of ill weather he could not leave at the season formerly appointed, and asked permission to remain a while in Maryland. On December 30 they answer his letter, permitting him to stay until May, 1720, and then positively command him to return. Apparently Hart had told them that no provision is made for him during his absence from the province. In their harsh answer, they call this declaration most ill-advised, and maintain that nothing is due him by the law for the support of government. In a rather labored sentence they tell him he has no ground to suppose that His Majesty's grace and favor to him is evaded by totally removing him, "which we shall do when we think fit."

This letter did not reach Hart<sup>4</sup> until after the April, 1720, session of the assembly, though he told that body that he does not leave the governorship by voluntary choice, but because he prefers integrity to interest. Mr. Rozier, a Papist,<sup>5</sup> had declared that he had done the governor's business, which was the only notice Hart had that he was to be superseded. Hart told the assembly that he hoped the commission of the governor did not "depend on that malicious and insignificant man."<sup>6</sup> "If it does," he cries out, "the Lord have mercy on the governor." Since the last session of the assembly Hart

<sup>1</sup> U. H. J., April 20, 1720.

<sup>2</sup> Henry Darnall, sr., Charles Diggs, Clement Hill, Benjamin Hall, William Digges (probably).

<sup>3</sup> L. H. J., October 1, 1720.

<sup>4</sup> In his introductory speech he states he has no recent advice from Baltimore.

<sup>5</sup> U. H. J., April 11, 1720.

<sup>6</sup> U. H. J., April 21, 1720.

had received letters from the proprietary<sup>1</sup> stating that MacNamara had made satisfactory submission to him and should be restored to practice. No reparation was made to Hart or to the insulted judges.

Before any proceedings could be taken MacNamara died, and with him died the controversy. It only remained for Hart to transmit Baltimore's letter to the assembly and to state that he was grieved by it and that he feared lest the example may be laid hold of by other practitioners. Some of them are "of his kidney, vehement espousers of the Popish faction," and use the governor "with such indecencies as are inconsistent with the grandeur of an inferior court." One of these other lawyers was undoubtedly the elder Daniel Dulany.<sup>2</sup> He was a "noted favorer of Papists" and comes into notice at this time through a charge of misfeasance he lays against Col. Thomas Addison of the land office. One Mark Brown seems to have also been an accuser in this matter. Addison,<sup>3</sup> an "honest Protestant and lover of the King and country," says Hart, has been taxed with "villainous things" by "little mean fellows," and writes that he has done his duty, but is a "mere pageant of paist board if he must suffer such barbarous affronts." The assembly seems loath to do anything in the matter.

The trouble with Birchfield<sup>4</sup> comes up at this session.<sup>5</sup> On December 13, 1718, the commissioners of customs wrote to Baltimore that Birchfield's course of conduct was correct, but that Hart obstructed His Majesty's service. They ask that he be instructed not to do so, and such instructions were sent. Hart was naturally offended and lays the matter before the assembly. The upper house suggest that the former assembly's address against Birchfield be inspected and that they discover how they came short of explaining things fully. This was done,<sup>6</sup> and the delegates report that they are surprised to find that the commissioners of customs rather countenance than redress abuses, and that Hart is arraigned by Birchfield

<sup>1</sup> Dated February 13, 1719 (U. H. J., April 9, 1720).

<sup>2</sup> U. H. J., April 14, 1720; L. H. J., April 9, 1720.

<sup>3</sup> A councillor.

<sup>4</sup> U. H. J., April 9, 1720.

<sup>5</sup> The old statehouse at St. Mary's City was given to William and Mary Parish at this time (April 7, 1720, L. H. J.).

<sup>6</sup> L. H. J., April 15, 1720.

for delaying proceedings, when they know that he "hath been very assiduous and zealous in promoting and expediting the affairs of the Crown."

The upper house<sup>1</sup> thought proper measures should be taken to render the address effectual, since the occasion of it still continued and the aggressors were encouraged, while the impartial conduct of the governor, as the judge in chancery,<sup>2</sup> was reproved. They suggest that Hart be requested to act as the province's agent in the matter.

The lower house<sup>3</sup> tell Hart that the docketts show his promptness, and that "we are so well satisfied with your excellency's integrity and justice, during your administration as chancellor, that the most invidious of your enemies can not in anywise make out the least charge of partiality or corruption." Yet they conceive that MacNamara's management of Birchfield's affairs was largely the cause of the evils in the customs. These are largely removed by MacNamara's death, and the delegates are not inclined to take further steps in the matter, so they decline to make use of Hart as their agent.

This surrender is very unpalatable to the council. They urge the insult to the governor, the danger to let another have opportunity to act as Birchfield did, and the fact that it is easier to prevent aggrivances than to be put to the necessity of seeking redress after suffering them. The commissioners say Birchfield did his duty and Hart was partial. This accusation should be answered. The lower house, however, stood to its position and the matter was dropped.<sup>4</sup>

A bill was brought in by the lower house<sup>5</sup> that Hart might enjoy the 3 pence per hogshead during his absence for a year, or until superseded. Hart thanked them for this,<sup>1</sup> but suggested that the money raised by that duty be paid the treasurer for the public charge, and that in lieu thereof Hart be paid at once a sum approximately equal to what would be raised by this duty in the next six months. The lower house at first thought this prejudicial to the interest of the new governor and wanting in duty to Baltimore, who may soon ap-

<sup>1</sup> U. H. J., April 19, 1720.

<sup>2</sup> Hart gave up the seals to Col. William Holland on account of this matter.

<sup>3</sup> L. H. J., April 19, 1720.

<sup>4</sup> L. H. J., April 22, 1720. A conference committee, on the last day of the session, recommended the employment of Hart as agent in the matter.

<sup>5</sup> L. H. J., April 16, 1720.

point another governor. Hart says Baltimore can not supersede him without permission of the Crown, and the latter has granted him leave of absence for twelve months, making no provision but for his absence.<sup>1</sup> He felt that the lower house acted "very cautiously in saving their money, and that he had deserved so much of Maryland that their representatives might have done me a favor, which he is persuaded no private friend would have refused him on less obligations." Further, he will have no support during his absence if not from the 3-pence duty. The lower house say the new governor may ask for this duty, and, having already voted it away, they will lie under his displeasure. Hart writes to the speaker, "I insist upon it that the 3 pence is due to me as governor until my commission is legally superseded, and resolve to take all proper measures to maintain it. His lordship's instructions can not take precedence of a law."<sup>2</sup> The council strenuously aided him, and the lower house, "reassuming" its former vote, grants the governor what he asked.

We notice, in general, throughout this session that the delegates are apt to yield to the influence<sup>3</sup> of Hart, as in former years. There is more friction and a little more stubbornness on the part of the delegates, but they rarely persist in opposition. This is clearly seen in the procedure with reference to an unguarded remark of the delegates that they did not care to enter into the discussion of a certain matter, since the session would be short. For this Hart at once brings them to account. They answer that certain members of the upper house gave them to understand that the end of the session was near.

"This is an insufficient answer," retorts Hart; "your expressions seem to infringe on the undoubted right of the proprietary to summon and adjourn assemblies."

To this the lower house made a submissive reply. They did not pretend to fix the length of the session, but thought it would not be a long one, as there was little public business.

<sup>1</sup> U. H. J., April 20, 1720.

<sup>2</sup> U. H. J., April 22, 1720.

<sup>3</sup> On April 22 the upper house recommends the delegates to allow a reasonable recompense to the governor's gardner, who "has been very serviceable and curious in making, leveling, and rolling the shell walk before the public building, for which the country has never been charged anything, though he has been very diligent and laborious therein." In 1715 a flagstaff had been ordered erected, with sufficient braces and a cedar frame, in front of the state house.

They acknowledged fully Baltimore's right.<sup>1</sup> So the incident terminated. Shortly after the close of the session Hart embarked for England and arrived there before August 8, when he answered certain queries of the board of trade in such a way as to show that he had lost none of his affection for the province. He then vanishes from Maryland's records.

In May, 1720, Baltimore and Guilford petitioned the King that Charles Calvert, captain in the First Regiment of Foot Guards and a cousin of the proprietary, be appointed governor of Maryland. They state that they find it necessary to change their governor, but give no reasons. This application is granted, and Calvert shortly leaves for Maryland. The friends of Thomas Brooke, the president of the council, as was reported to Baltimore, had spread rumors that Baltimore had sent a private commission to Brooke while Hart was in Maryland. This and certain undefined hasty proceedings of Brooke caused Calvert's speedy departure from England. On October 12 he met the assembly, read them Baltimore's letter, notifying them of his appointment, and expressing the hope that "old rancor and jealousy will now disappear."<sup>2</sup> Hart returned to London and was nominated by the King, on May 9, 1721, as governor of the Leeward Islands<sup>3</sup> in the West Indies. He arrived at the seat of government at Antigua on December 19, 1721, and found himself ruler of a domain which included the islands of Antigua, St. Christophers, Nevis, Montserrat, and the Virgin Islands.

His career here was fully as stormy as in Maryland. He was at continual variance with the assembly about his salary, and at one time removed his family to St. Christophers. In 1725 various petitions were presented to the British Government against him, and he was replaced by the Earl of Londonderry. Hart sailed for England on January 14, 1727, and of his later life nothing has been discovered.

<sup>1</sup> U. H. J., April 22, 1720. I suspect there was a malicious satisfaction felt by the delegates when they refused to draw up an address to the King, as Hart recommended them to do on the last day of the session. They tell Hart they want to go home after so long a detention which has not resulted in "any great service to our country." Many of the members are sick or absent, and they enjoy what we may or reasonably can desire. This they have often told the best of kings, and ask to be excused from repeating it.

<sup>2</sup> In his address to the assembly of 1721, Calvert speaks of "the little heats being at an end."

<sup>3</sup> N. and Q., 8th series, 11, 31; Anderson's Col. Ch., 111, 181, 187; Edwards's West Indies, 11, 453.



A strong, zealous, impetuous man, he was a most devoted member of the Anglican Church and a faithful servant of the English Crown. He was probably overbearing and exacting and had many of the defects of his times and of his Irish blood, but with it all his conscientious devotion to duty, his single purpose to have his province well governed, and his painstaking care of the details of administration make him a man who should not be forgotten. The code of laws which Maryland adopted under his influence remained his best monument and was in force for more than half a century after his departure.





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